

The Land and Environment Court of NSW



Annual Review

2016

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Foreword from the Chief Judge

This Review provides information on the Court, its human resources and its performance in the year under review. The focus is on court administration, in particular on the Court's management of its caseload. The objectives of court administration are equity, effectiveness and efficiency. The Review analyses the ways in and the extent to which the Court has achieved these objectives in the year under review.

Traditionally, court administration performance is evaluated by quantitative output indicators based on the registrations (filings), finalisations, pending caseload and time taken between filing and finalisation. Prior to 2006, the Court's Annual Reviews had focused solely on these performance indicators. This year's Review continues the practice adopted in the last nine years' Annual Reviews of reporting on an expanded range of quantitative performance indicators. Reference to these quantitative performance indicators reveals that the Court has been successful in achieving the objectives of equity, effectiveness and efficiency.

However, these quantitative performance indicators do not give a full picture of the Court's performance. There are other qualitative indicators that assist in gaining an appreciation of the Court's performance. This year's Review again includes qualitative output indicators of access to justice, including in relation to the affordability of litigation in the Court, the accessibility of the Court and the responsiveness of the Court to the needs of users.

But even the inclusion of these qualitative indicators still leaves unevaluated the Court's material contribution to the community represented by the large volume of decisions made. The Court delivered 444 written judgments. These judgments are published on NSW Caselaw website (<https://www.caselaw.nsw.gov.au/>). They provide a valuable contribution to planning and environmental jurisprudence. They also enable transparency and accountability in the Court's decision-making.

Throughout the year, the Judges, Commissioners and Registrars of the Court have administered the Court and the rule of law with a high degree of independence, impartiality, integrity, equity, effectiveness and efficiency.

The Honourable Justice Brian J Preston SC
Chief Judge



*The Hon. Justice Brian J Preston SC, Chief Judge
Photo by Ted Sealey*

1 **2016: An Overview**

- Court performance
- Reforms and developments
- Education and community involvement
- Consultation with court users

Court performance

The Court has an overriding duty to ensure the just, quick and cheap resolution of the real issues in all civil proceedings in the Court. In many areas of its work, the Court has been able to maintain or improve its performance in achieving this overriding objective relative to the results achieved in 2015. Of particular significance are:

- Continued improvement in the timeliness of the pending caseload in Classes 4-8, as measured by the backlog indicator in Classes 4-8.
- An increase in the percentage of matters in all Classes finalised pre-trial (to the highest percentage in the last five years).
- An increase in both the number and percentage of matters in Classes 1-3 finalised by means of s 34 and s 34AA conciliation conferences and on-site hearings.
- Maintaining or improving the percentage of matters in all classes finalised in less than 12 months.
- An improvement in the clearance rate for matters in Classes 1-3, although still below 100%, and maintenance of a clearance rate for matters in Classes 4-8 above 100%.
- The median number of pre-hearing attendances was maintained in Classes 1, 2 and 3, decreased in Classes 4 and 6, but increased in Classes 5 and 8.
- All judges and commissioners met the standard for continuing professional development.

In other areas, however the Court's performance declined:

- A greater increase in total registrations than the increase in total finalisations, resulting in total pending caseload marginally increasing.

- A decline in the timeliness of the pending caseload in Classes 1-3 as measured by the backlog indicator in Classes 1-3.
- A decline in the percentage of reserved judgments delivered within 14 and 30 days of hearing but a slight improvement in the percentage of reserved judgments delivered within 90 days of hearing.

Reforms and developments

During 2016, reforms occurred in the following areas:

- Changes to Court legislation;
- Changes in Court rules;
- Introduction of a new Practice Note on Strata Schemes Development Proceedings;
- Approval of new Forms;
- Introduction of new technology including JusticeLink and NSW Online Registry (including Online Court);
- New information on the Court's website; and
- Maintenance of Library services.

The Court continued implementing the International Framework for Court Excellence. The Court has monitored access to and use of the Court's decisions. The Court, in conjunction with the Judicial Commission of New South Wales, updated the sentencing database for environmental offences maintained on the Judicial Information Research System (JIRS).

These developments in the Court's jurisdiction and work are discussed in Chapter 4 – Reforms and Developments.

Education and community involvement

The Court's commitment to continuing professional development was manifested by the adoption in October 2008 of a continuing professional development policy for Judges and Commissioners of the Court. The policy sets a standard of five days (30 hours) of professional development activities each calendar year. To assist in meeting the standard, the Court and the Judicial Commission of New South Wales provide an annual court conference and a twilight seminar series. In 2016, the Court's Annual Conference was held at Peppers Craigieburn in Bowral. The Court held six twilight seminars in 2016, two field trips, and one cross-jurisdictional seminar.

In 2009, the Court commenced production on a quarterly basis of a judicial newsletter summarising recent legislation and judicial decisions of relevance to the Court's jurisdiction. The judicial newsletter is distributed to all Judges, full time and Acting Commissioners and Registrars. From January 2010, the Judicial Newsletter has been made publicly available on the Court's website.

The Judges and Commissioners updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops. Some of the educational activities were tailored specifically to the Court's needs while others were of broader relevance.

The Court has a high national and international reputation as a leading specialist environment court. There is significant demand for the exchange of knowledge and experience within the national and international legal and judicial communities. Judges and Commissioners of the Court have actively participated in capacity building and information exchange by presenting papers and participating as trainers in a variety of conferences, seminars and workshops, giving lectures at educational institutions and presiding over moot courts. The Court has also regularly hosted international and national delegations.

Chapter 6 – Education and Community Involvement details the Court's activities in judicial education and involvement in the community.

Consultation with court users

In 2016, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Groups. Consultation occurred both formally through the Court Users Group and also the Mining Court Users Group and informally with a variety of legal practitioners and professional bodies.

Details of the Court Users Group and Mining Court Users Group are in Appendix 1 and the Court's Committees are in Appendix 2.

2 Court Profile

- The Court
- Statement of purpose
- The Court's jurisdiction
- The Court's place in the court system
- Who makes the decisions?
 - The Judges
 - The Commissioners
 - The Registrars
- Appointments and retirements
- Supporting the Court: the Registry

The Court

The Land and Environment Court of New South Wales was established on 1 September 1980 by the *Land and Environment Court Act 1979* (the Court Act) as a superior court of record. It is a specialist court that enjoys the benefits of a wide jurisdiction combined in a single court. It is the first specialist environmental, superior court in the world.



Statement of purpose

The Court's purpose is to safeguard and maintain:

- the rule of law;
- equality of all before the law;
- access to justice;
- fairness, impartiality and independence in decision-making;
- processes that are consistently transparent, timely and certain;
- accountability in its conduct and its use of public resources; and
- the highest standards of competency and personal integrity of its Judges, Commissioners and support staff.

To assist in fulfilling its purpose, the Court aims to achieve excellence in seven areas:

- **Court leadership and management:** To provide organisational leadership that promotes a proactive and professional management culture, pursues innovation and is accountable and open.
- **Court planning and policies:** To formulate, implement and review plans and policies that focus on fulfilling the Court's purpose and improving the quality of its performance.

- **Court proceedings:** To ensure the Court's proceedings and dispute resolution services are fair, effective and efficient.
- **Public trust and confidence:** To maintain and reinforce public trust and confidence in the Court and the administration of justice.
- **User satisfaction:** To understand and take into account the needs and perceptions of its users relating to the Court's purpose.
- **Court resources:** To manage the Court's human, material and financial resources properly, effectively and with the aim of gaining the best value.
- **Affordable and accessible court services:** To provide practical and affordable access to information and court processes and services.

The Court's jurisdiction

The Court has an appellate and a review jurisdiction in relation to planning, building, environmental, mining and ancillary matters. Jurisdiction is exercised by reference to the subject matter of the proceedings. This may involve matters that have an impact on community interest as well as matters of government policy. The Court has summary

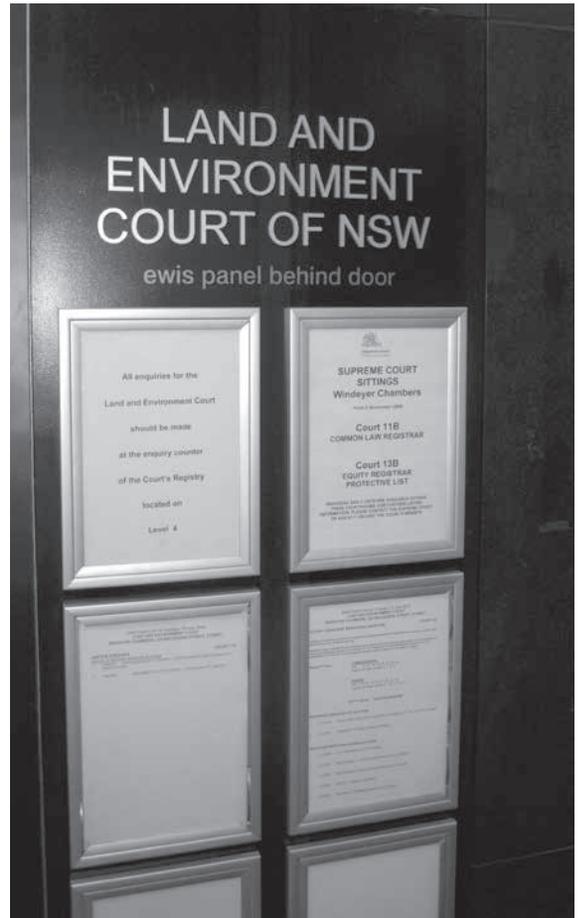
criminal jurisdiction and appellate criminal jurisdiction in relation to environmental offences.

In 2016, the Court Act provided for eight classes of jurisdiction in the Court.

Table 2.1 summarises these eight classes.

Table 2.1 Classes of the Court's Jurisdiction

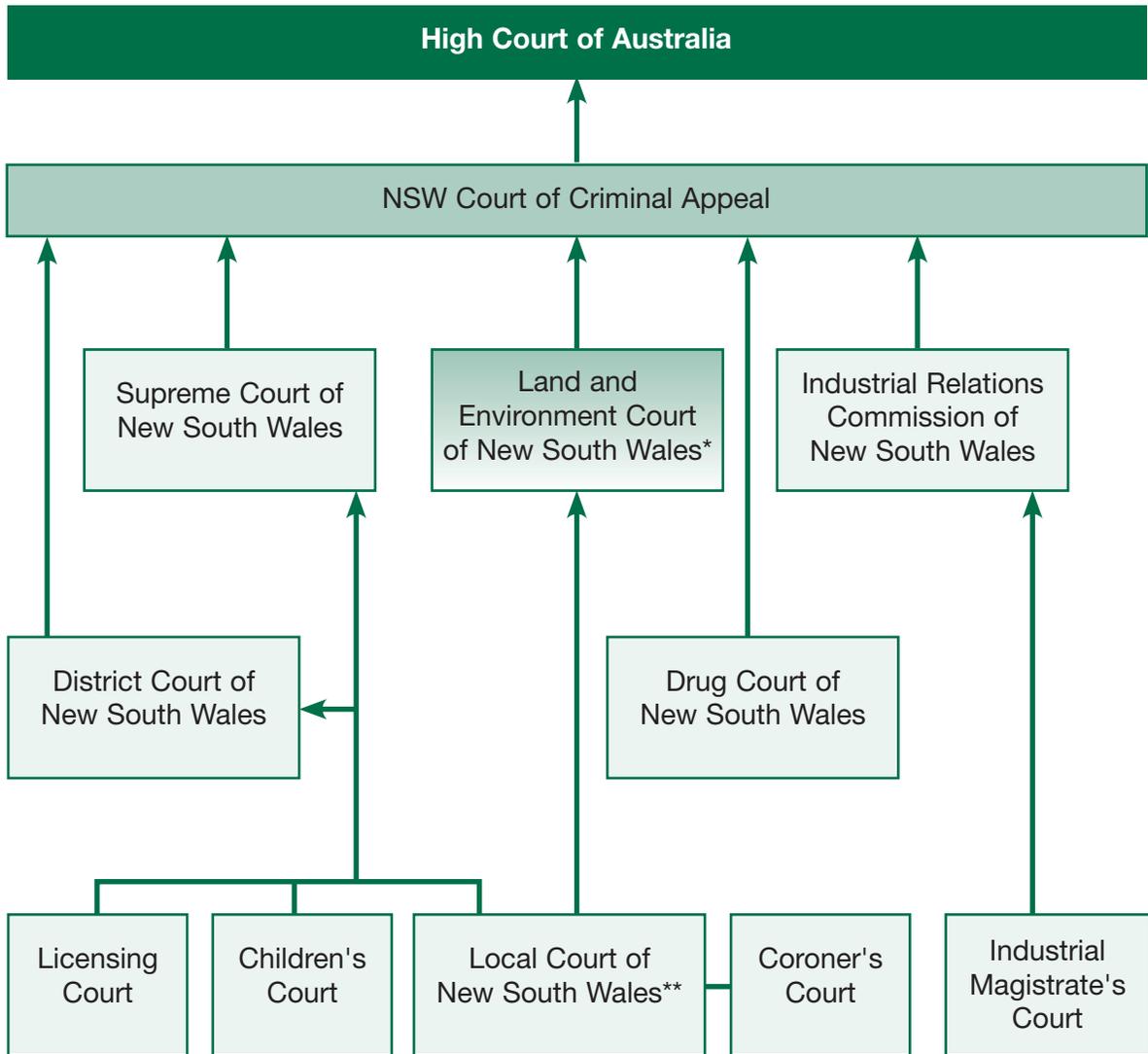
Class 1	environmental planning and protection appeals (merits review appeals)
Class 2	local government, trees and miscellaneous appeals (merits review appeals)
Class 3	land tenure, valuation, rating and compensation matters (merits review appeals)
Class 4	environmental planning and protection (civil enforcement and judicial review)
Class 5	environmental planning and protection (summary criminal enforcement)
Class 6	appeals against convictions or sentences relating to environmental offences (appeals as of right from decisions of the Local Court in prosecutions for environmental offences)
Class 7	appeals against convictions or sentences relating to environmental offences (appeals requiring leave from decisions of the Local Court in prosecutions for environmental offences)
Class 8	civil proceedings under the mining legislation



The Court's place in the court system

The Court's place in the New South Wales court system is shown diagrammatically in Figure 2.1 (criminal jurisdiction) and Figure 2.2 (civil jurisdiction). Special arrangements are made in relation to appeals from the Court's decisions in Classes 1, 2, 3, 4 and 8 of the Court's jurisdiction depending on whether the decision was made by a Judge or a Commissioner. Figure 2.3 shows diagrammatically these appellate arrangements.

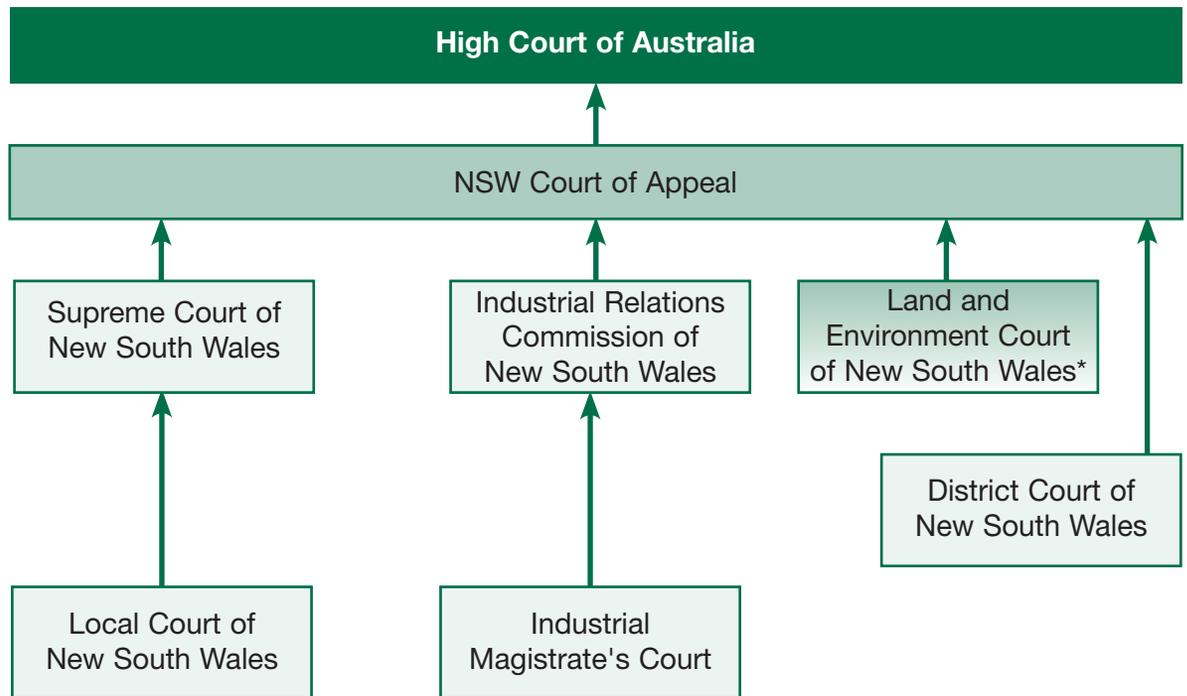
Figure 2.1 New South Wales Court System – Criminal Jurisdiction



* Appeals to the NSW Court of Criminal Appeal are in relation to proceedings in Classes 5, 6 or 7 of the Land and Environment Court's jurisdiction.

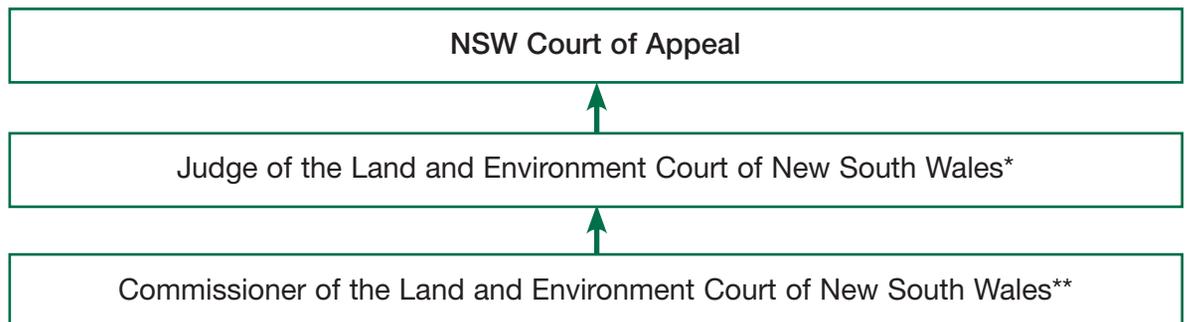
** Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

Figure 2.2 New South Wales Court System – Civil Jurisdiction



* Appeals to the NSW Court of Appeal are in relation to proceedings in Classes 1, 2, 3, 4 or 8 of the Land and Environment Court's jurisdiction.

Figure 2.3 Appeals from decisions in Classes 1, 2, 3, 4 and 8 of the Land and Environment Court of New South Wales



* Appeals from a decision of a Judge in Classes 1, 2, 3, 4 or 8 of the Land and Environment Court's jurisdiction are to the NSW Court of Appeal on a question of law.

** Appeals from a decision of a Commissioner in Classes 1, 2, 3 or 8 of the Land and Environment Court's jurisdiction are to a Judge of the Land and Environment Court on a question of law and any further appeal from the Judge's decision is only by leave of the NSW Court of Appeal.

Who makes the decisions?

The Judges

Judges have the same rank, title, status and precedence as the Judges of the Supreme Court of New South Wales. Judges preside over all Class 3 (land tenure and compensation), 4, 5, 6 and 7 matters, and can hear matters in all other Classes of the Court's jurisdiction.

As at 31 December 2016, the Judges, in order of seniority, were as follows:

Chief Judge

The Honourable Justice Brian John Preston SC

Judges

The Honourable Justice Terence William Sheahan AO

The Honourable Justice Nicola Hope Margaret Pain

The Honourable Justice Rachel Ann Pepper

The Honourable Justice Timothy John Moore

The Honourable Justice John Ernest Robson



Court hearing

The Commissioners

Suitably qualified persons may be appointed as Commissioners of the Court. The qualifications and experience required for a Commissioner are specified in s 12 of the Court Act and include the areas of:

- administration of local government or town planning;
- town, country or environmental planning;
- environmental science, protection of the environment or environmental assessment;
- land valuation;
- architecture, engineering, surveying or building construction;
- management of natural resources or Crown Lands;
- urban design or heritage;
- land rights for Aborigines or disputes involving Aborigines; and
- law.

Persons may be appointed as full-time or part-time Commissioners for a term of 7 years. Persons may also be appointed as Acting Commissioners for a term of up to 12 months. Acting Commissioners are called upon on a casual basis to exercise the functions of a Commissioner as the need arises.

The primary function of Commissioners is to adjudicate, conciliate or mediate merits review appeals in Classes 1, 2, and 3 of the Court's jurisdiction. On occasion the Chief Judge may direct that a Commissioner sit with a Judge, or that two or more Commissioners sit together to hear Class 1, 2 and 3 matters.

A Commissioner who is an Australian lawyer may also hear and determine proceedings in Class 8 of the Court's jurisdiction (when they are called a Commissioner for Mining).

As at 31 December 2016, the Commissioners were as follows:

Senior Commissioner

Ms Rosemary Martin

Commissioners

Mr Graham T Brown

Ms Susan A Dixon

Ms Susan I Morris

Ms Susan T O'Neill

Ms Danielle Dickson

Mr Michael Chilcott

Ms Jennifer Smithson

Acting Commissioners

Associate Professor Dr Paul Adam AM –
botanist and ecologist

Professor Dr Megan Davis – member of the
Aboriginal community and lawyer

Ms Lisa Durland – arboricultural consultant

Ms Judy A Fakes – arborist
(from 2 October 2016)

Mr David Galwey – arboricultural consultant

Mr Robert Hussey – engineer

Dr Jeffrey Kildea – lawyer with experience in
matters concerning land rights for Aborigines

Mr Norman Laing – member of the
Aboriginal community and lawyer

Mr John Maston – lawyer with experience in
land valuation matters

Mr E Craig Miller – valuer and mediator

Professor David Parker – valuer and
mediator

Dr Robert (Bob) Smith – environmental
management consultant (regional, national
and international)

Ms Jennifer Smithson – town planner
(1 January 2016 to 31 July 2016)

Mr Ross Speers – engineer

Professor Sharon Sullivan AO – heritage
consultant



R-L: Commissioners Susan Dixon, Susan O'Neill, Jennifer Smithson, Graham Brown, Sue Morris,
Senior Commissioner Rosemary Martin, Registrar Joanne Gray, Commissioners Michael Chilcott and Danielle Dickson

The Registrars

The Court Registrar has the overall administrative responsibility for the Court, as well as exercising quasi-judicial powers such as conducting directions hearings and mediations. The Chief Judge directs the Registrar on the day-to-day running of the Court.

The Court is a business centre within the Department of Justice. The Registrar, as Business Centre Manager, has reporting and budgetary responsibilities to the Secretary of that department.

As at 31 December 2016, the Registrars were as follows:

Director and Registrar

Ms Joanne Gray

Assistant Registrar and Manager Court Services

Ms Maria Anastasi

Appointments and retirements

Appointments

Judges

The Hon. Justice Tim Moore was appointed a Judge of the Court on 4 January 2016.

The Hon. Justice John Robson was appointed a Judge of the Court on 5 July 2016.

Commissioners

Ms Danielle Dickson was appointed as a Commissioner of the Court on 18 July 2016.

Mr Michael Chilcott was appointed as a Commissioner of the Court on 25 July 2016.

Ms Jennifer Smithson was appointed as a Commissioner of the Court on 1 August 2016.

Ms Rosemary Martin was appointed as Senior Commissioner of the Court on 17 October 2016.

Acting Commissioners

Ms Judy Fakes was appointed as an Acting Commissioner of the Court on 2 October 2016.

Retirements

Judges

The Hon. Justice Peter Biscoe retired as a Judge of the Court on 12 March 2016.

The Hon. Justice Malcolm Craig retired as a Judge of the Court on 5 June 2016.

Commissioners

Ms Linda Pearson retired as a Commissioner of the Court on 12 July 2016.

Ms Annelise Tuor retired as a Commissioner of the Court on 27 October 2016.

Ms Judy Fakes retired as a Commissioner of the Court on 1 October 2016 (and was appointed as an Acting Commissioner).

Acting Commissioners

Ms Jennifer Smithson retired as an Acting Commissioner of the Court on 31 July 2016 (and was appointed as a Commissioner).

Supporting the Court: the Registry

The Court Registry comprises the following four sections:

Client Services

This section is the initial contact for Court users and provides services such as procedural assistance, filing and issuing of court process, maintaining of records and exhibits, as well as having responsibilities under the *Public Finance and Audit Act 1983*. It also provides administrative assistance for Online Court.

Listings

This section provides listing services, including preparation of the Court's daily and weekly programme and publication of the daily Court list on the internet.

Information and Research

This section provides statistical analysis and research to the Registrar and the Chief Judge. It also supports the administration of the Court's website.

Commissioner Support

This section provides word processing and administrative support in the preparation of Commissioners' judgments and orders.



Lodging documents at the Registry

Copies of decisions of the Court can be found on NSW Caselaw by either going through the tab on the Court website home page 'Land and Environment Court decisions' or directly at <https://www.caselaw.nsw.gov.au/>

The Court provides copies of daily court lists on the Court's website at: http://www.lec.justice.nsw.gov.au/Pages/court_lists/court_lists.aspx

3 Caseflow Management

- Introduction
- Overview by class of jurisdiction
- Types of directions hearings
- Class 1 hearing options
- Alternative Dispute Resolution
 - Conciliation
 - Mediation
 - Neutral evaluation

Introduction

The Court manages the flow of its cases from inception to completion in a number of ways, and is continually looking to improve its processes and outcomes. The Chief Judge determines the day-to-day caseflow management strategy of the Court. This strategy is reflected in the *Land and Environment Court Act 1979*, *Land and Environment Court Rules 2007*, *Civil Procedure Act 2005*, *Uniform Civil Procedure Rules 2005*, and the Practice Notes issued by the Chief Judge. The Judges, Commissioners and Registrars work together to ensure cases are resolved in a just, timely and cost-efficient manner.

Overview by class of jurisdiction

Caseflow management varies with the type or class of proceeding.

Class 1

Proceedings in Class 1 involve merits review of administrative decisions of local or State government under various planning or environmental laws. The Court in hearing and disposing of the appeal sits in the place of the original decision-maker and re-exercises the administrative decision-making functions. The decision of the Court is final and binding and becomes that of the original decision-maker.

Appeals are allocated a date for a directions hearing before the Registrar when the appeal is filed with the Court. The directions hearing may take the form of an in-court hearing, a telephone hearing or an Online Court hearing (see Types of Directions Hearings below).

At the directions hearing, the Registrar will review the matter and make appropriate

directions for the orderly, efficient and proper preparation of the matter for resolution by the appropriate dispute resolution process. The appropriate dispute resolution process may be a consensual process such as conciliation (a conference under s 34 of the Court Act), mediation or neutral evaluation or an adjudicative process by the Court hearing and disposing of the matter either at an on-site hearing or a court hearing.

If an issue arises that falls outside the specified duties of a Registrar or the Registrar otherwise considers it appropriate, the Registrar may refer the case to a Judge.

The practice and procedure governing Class 1 appeals is described in the Practice Notes – Class 1 Development Appeals, Class 1 Residential Development Appeals and Classes 1, 2 and 3 Miscellaneous Appeals (depending on the type of appeal).

Class 2: Tree disputes

Proceedings under the *Trees (Disputes Between Neighbours) Act 2006* involve applications to the Court to remedy, restrain or prevent damage caused, being caused or likely to be caused to property or to prevent a risk of injury to any person as a consequence of a tree.

The Court manages a separate list for tree disputes. About 57% of the parties in this type of proceeding are self-represented. The application is returnable before the Assistant Registrar who is assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Assistant Registrar explains the process of preparation for and hearing of the application.

The Assistant Registrar explores whether the parties may be able to resolve the dispute between themselves without court orders

authorising interference with or removal of a tree. If the parties are not able to resolve the dispute, the Assistant Registrar will fix a final hearing date, usually not more than four to five weeks after the first court attendance. The Assistant Registrar will make directions in preparation for the final hearing, such as for the provision of information by the parties to each other.

The final hearing will usually be held on-site. A Commissioner or Commissioners will preside at the hearing. Usually, one of the Commissioners will have special knowledge and expertise in arboriculture. The practice and procedure for tree disputes is described in the Practice Note – Class 2 Tree Applications. Additional information is available in the special pages for tree disputes on the Court’s website.

Class 3

Proceedings in Class 3 are of different types. One type of proceeding involves claims for compensation by reason of the compulsory acquisition of land and another type involves valuation objections under s 37 of the *Valuation of Land Act 1916*.

The Practice Note – Class 3 Compensation Claims and Practice Note Class 3 – Valuation Objections establish Lists for these matters. The Class 3 Lists are managed by the List Judge in court each Friday. The practice notes specify the directions hearings to be held in preparation for hearing and the directions that will usually be made at these directions hearings. The purpose of the Practice Notes is to set out the case management practices for the just, quick and cheap resolution of the proceedings.

Valuation objections are usually heard by Commissioners, mostly persons with special knowledge and expertise in the valuation of land. Compensation claims are usually

heard by a Judge, at times assisted by a Commissioner with special knowledge and expertise in valuation of land.

Other matters assigned to Class 3, such as Aboriginal land claims, are also case managed by the Class 3 List Judge. Such matters are heard by a Judge, assisted by one or more Commissioners appointed with qualifications under s 12(2)(g) of the Court Act including in relation to land rights for Aborigines. The practice and procedure governing Aboriginal Land Claims is described in the Practice Note – Class 3 Aboriginal Land Claims.

Class 4

Proceedings in Class 4 are of two types: civil enforcement, usually by government authorities, of planning or environmental laws to remedy or restrain breaches, and judicial review of administrative decisions and conduct under planning or environmental laws.

Class 4 proceedings are case managed in a Class 4 List by the List Judge on a Friday. The List Judge makes appropriate directions for the orderly, efficient and proper preparation for trial. Applications for urgent or interlocutory relief can be dealt with at any time by the Duty Judge.

The practice and procedure governing Class 4 proceedings is described in the Practice Note – Class 4 Proceedings.

Class 5

Proceedings in Class 5 involve summary criminal enforcement proceedings, usually by government authorities prosecuting offences against planning or environmental laws.

Class 5 proceedings are case managed in a Class 5 List by the List Judge on a Friday. The List Judge makes appropriate

directions for the orderly, efficient and proper preparation for trial or sentence hearing. One purpose of the directions hearings is to allow the entry of pleas prior to the trial.

Such a procedure can minimise the loss of available judicial time that occurs when trials are vacated after they are listed for hearing or when a guilty plea is entered immediately prior to, or on the day of, the trial's commencement.

The directions hearing involves legal practitioners of the parties at an early stage of the proceedings. This allows the prosecution and defence to consider a range of issues that may provide an opportunity for an early plea of guilty, or shorten the duration of the trial.

The practice and procedure governing Class 5 proceedings is described in the Practice Note – Class 5 Proceedings.

Classes 6 and 7

Proceedings in Classes 6 and 7 involve appeals and applications for leave to appeal from convictions and sentences with respect to environmental offences by the Local Court. The procedure for such appeals and applications for leave to appeal is regulated by the *Crimes (Appeal and Review) Act 2001*.

Proceedings in Classes 6 and 7 are case managed by the List Judge on a Friday.

Class 8

Proceedings in Class 8 are disputes under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*. Class 8 proceedings are case managed in a Class 8 List by a Commissioner for Mining on every second Monday morning. The Commissioner for Mining makes appropriate directions for the orderly, efficient and proper preparation

for trial. Class 8 proceedings must be heard by a Judge or a Commissioner for Mining. Information on Class 8, and mining legislation and cases, are available on the special pages for mining on the Court's website.

Types of directions hearings

The Court offers court users three types of directions hearing:

in-court directions hearing

where representatives of the parties attend before the Registrar or a Judge in court

telephone directions hearing

where representatives of the parties talk with the Registrar or a Judge in a conference call

Online Court directions hearing

where representatives of the parties post electronic requests to the Registrar and the Registrar responds using the internet

In general, the initial allocations for directions hearings are:

- For Sydney and metropolitan appeals, the appeal will usually be listed for the first directions hearing as an in-court directions hearing at the Land and Environment Court in Sydney.
- For country appeals, the appeal will usually be listed for the first directions hearing as a telephone directions hearing.

Once the first directions hearing has been held, the parties may utilise the Online Court facility for further directions hearings.

In 2016, the Court recorded 1,588 registered eCourt on Online Court users (same as in 2015). The Court is recognised nationally as a leader in eCourt case management.

The Court's use of eCourt ceased with the introduction of JusticeLink and the NSW Online Registry (including Online Court) on 23 May 2016.

Class 1 hearing options

The Court Act provides that a variety of Class 1 and Class 2 matters are to be dealt with by the Court as either an on-site hearing or a court hearing. The Registrar determines at directions hearings the appropriate type of hearing having regard to the value of the proposed development, the nature and extent of the likely impacts, the issues in dispute, any unfairness to the parties and the suitability of the site for an on-site hearing.

An on-site hearing is a final hearing of a matter conducted at the site the subject of the appeal. Apart from the judgment, an on-site hearing is not recorded.

A court hearing is the final determination of a matter in the Court, and the hearing is recorded.

Alternative Dispute Resolution

The Court encourages Alternative Dispute Resolution (ADR). ADR refers to processes, other than adjudication by the Court, in which an impartial person assists the parties to resolve the issues between them. The methods of ADR available are:

- conciliation;
- mediation; and
- neutral evaluation.

Conciliation

Conciliation is a process in which the parties to a dispute, with the assistance of an impartial conciliator, identify the issues

in dispute, develop options, consider alternatives and endeavour to reach agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the parties to reach agreement.

Conciliation in the Court is undertaken pursuant to s 34 of the Court Act. This provides for a combined or hybrid dispute resolution process involving first, conciliation and then, if the parties agree, adjudication.

Conciliation involves a Commissioner with technical expertise on issues relevant to the case acting as a conciliator in a conference between the parties. The conciliator facilitates negotiation between the parties with a view to their achieving agreement as to the resolution of the dispute.

If the parties are able to reach agreement, the conciliator, being a Commissioner of the Court, is able to dispose of the proceedings in accordance with the parties' agreement (if it is a decision that the Court could have made in the proper exercise of its functions). Alternatively, even if the parties are not able to decide the substantive outcome of the dispute, they can nevertheless agree to the Commissioner adjudicating and disposing of the proceedings.

If the parties are not able to agree either about the substantive outcome or that the Commissioner should dispose of the proceedings, the Commissioner terminates the conciliation conference and refers the proceedings back to the Court for the purpose of being fixed for a hearing before another Commissioner. In that event,

the conciliation Commissioner makes a written report to the Court stating that no agreement was reached and the conference has been terminated and setting out what in the Commissioner's view are the issues in dispute between the parties. This is still a useful outcome, as it can narrow the issues

in dispute between the parties and often results in the proceedings being able to be heard and determined expeditiously, in less time and with less cost.

Table 3.1 shows the number of conciliation conferences between 2012-2016.

Table 3.1 s 34 Conciliation Conferences 2012 – 2016

	2012	2013	2015	2015	2016
s 34 conferences	911	899	1,169	1,500	2,035

(NB: the figures are totals of ss 34 and 34AA conferences held in a year)

The table shows a substantial increase in utilisation of conciliation conferences between 2012 and 2016, with an additional 535 conferences in 2016 compared to 2015.

Mediation

Mediation is a process in which the parties to a dispute, with the assistance of an impartial mediator, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

The Court may, at the request of the parties or of its own volition, refer proceedings in Classes 1, 2, 3, 4 and 8 to mediation. The Court provides a mediation

service at no cost to the parties by referral to the Court's mediator. The Court may also refer proceedings for mediation to an external mediator not associated with the Court and agreed to by the parties.

Table 3.2 provides a comparison between mediations in 2012 to 2016. Internal mediations are those conducted by the Court mediator. External mediations are those conducted by a mediator not associated with the Court and agreed to by the parties.



*An on-site hearing conducted by Commissioner Graham Brown
Photo source: <http://www.nbnnews.com.au/2016/12/14/land-and-environment-court-take-tour/>*

Table 3.2 Mediations in 2012 – 2016

		2012	2013	2014	2015	2016
Classes 1 and 2	Total:	5	0	3	5	2
	Internal	3	0	3	4	2
	External	2	0	0	1	0
	Number finalised pre-hearing	4	0	2	3	2
	% finalised pre-hearing	80	0	67	60	100
Class 3	Total:	9	9	4	2	5
	Internal	5	7	4	2	4
	External	4	2	0	0	1
	Number finalised pre-hearing	9	9	3	1	5
	% finalised pre-hearing	100	100	75	50	100
Class 4	Total:	9	9	22	22	19
	Internal	8	8	17	22	17
	External	1	1	5	0	2
	Number finalised pre-hearing	8	7	18	19	14
	% finalised pre-hearing	89	88	82	86	74
All Classes	Total:	23	18	29	29	26
	Internal	16	15	24	28	23
	External	7	3	5	1	3
	Number finalised pre-hearing	21	16	23	23	21
	% finalised pre-hearing	91	89	79	79	81

The total number of mediations decreased slightly between 2015 and 2016. The number of mediations in 2016 in Classes 1 and 2 decreased from 2015 and in Class 3 increased from 2015. The number of mediations in Classes 1, 2 and 3 are comparatively few because of the ready availability and utilisation of conciliation under s 34 of the Court Act, conciliation being another form of alternative dispute resolution. Mediations in Class 4 between 2015 and 2016 decreased slightly.

Neutral evaluation

Neutral evaluation is a process of evaluation of a dispute in which an impartial evaluator

seeks to identify and reduce the issues of fact and law in dispute. The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

The Court may refer proceedings in Classes 1, 2, 3, 4 and 8 to neutral evaluation with or without the consent of the parties. The Court has referred matters to neutral evaluation by a Commissioner or an external person agreed to by the parties.

4 Reforms and Developments

- Changes to Court legislation
- Changes in Court rules
- New Practice Note
- New Approval of Forms
- New information on the Court's website
- New technology
- The Land and Environment Court Clinic
- Maintenance of library services
- Implementing the International Framework for Court Excellence
- Monitoring access to and use of the Court's decisions
- Sentencing database for environmental offences

During 2016, reforms occurred in the following areas:

- Changes to Court legislation
- Change in Court rules
- New Practice Note
- New Approval of Forms
- New technology
- New information on the Court's website
- Maintenance of library services

The Court continued implementing the International Framework for Court Excellence. One initiative has been to monitor access to and use of the Court's decisions. The Court, in conjunction with the Judicial Commission of New South Wales, maintained the sentencing database for environmental offences on the Judicial Information Research System (JIRS).

Changes to Court legislation

The *Land and Environment Court Act 1979* was amended, by the *Courts Legislation Amendment (Disrespectful Behaviour) Act 2016*, to insert a new section 67A. This section makes it an offence for a person who is an accused person or defendant in, or a party to, proceedings before the Court (or has been called to give evidence in proceedings before the Court) to intentionally engage in behaviour disrespectful to the Court or the Judge presiding over proceedings (according to established court practice and convention) in Court during proceedings. The amendment commenced on 1 September 2016.

The *Land and Environment Court Act 1979* was amended, by the *Strata Schemes Development Act 2015*, to give the Land and Environment Court jurisdiction to hear appeals, applications and proceedings under the *Strata Schemes Development Act 2015*.

Section 18 (Class 2) was amended to give the Land and Environment Court jurisdiction to hear appeals under sections 66 and 85 of the *Strata Schemes Development Act 2015* and proceedings under sections 86 and 92 of the Act. Section 19 (Class 3) was amended to give the Land and Environment Court jurisdiction to hear applications and proceedings under Divisions 6, 7 and 8 of Part 10 of the Act. Section 20 (Class 4) was amended to give the Land and Environment Court jurisdiction to hear and dispose of proceedings to enforce a right, obligation or duty conferred or imposed by a strata renewal plan and to review, or command, the exercise of a function conferred or imposed by a strata renewal plan. The amendments commenced on 30 November 2016.

Changes in Court rules

On 19 February 2016, the *Land and Environment Court Rules 2007* were amended as follows:

- Rule 3.4 was amended to reflect the changes to the relevant sections of the *Environmental Planning and Assessment Act 1979*, so that references to sections 97(4), 97(5) and 98(3) are removed and replaced with a reference to section 97A(4).
- Part 5 of the *Land and Environment Court Rules 2007* was amended so that specified rules in Part 51B of the *Supreme Court Rules 1970*, concerning appeals to the Court under Part 5 of the *Crimes (Appeal and Review) Act 2001*, now apply to proceedings in Classes 6 and 7. In particular, rules 3, 5(1), (2) and (6)-(9), 7-12, 14-16, 17(1) and (3) and 18 of Part 51B of the *Supreme Court Rules 1970* now apply, so far as applicable, to proceedings in Class 6 or 7.

Amendments were made to rules 5.2 and 7.6 the *Land and Environment Court Rules* and Part 3 of the *Uniform Civil Procedure Rules 2005* in anticipation of the commencement of the Court's use of JusticeLink and the NSW Online Registry on 23 May 2016. Rule 5.2 of the *Land and Environment Court Rules 2007* was amended to apply Part 3 (Electronic case management) of the *Uniform Civil Procedure Rules 2005* to proceedings in Class 5, 6 or 7 of the jurisdiction of the Land and Environment Court. Rule 7.6, which concerns the entry of judgments and orders of the Court, was limited so that it concerns judgments and orders that were given or made before 20 May 2016. Judgments and orders can now be entered in accordance with rule 36.11 of the *Uniform Civil Procedure Rules 2005*. Part 3 of the *Uniform Civil Procedure Rules 2005* was amended to reflect that the electronic case management system known as Online Registry is now authorised for use in the Land and Environment Court, in lieu of eCourt. The amendments commenced on 20 May 2016.

New Practice Note

The Court made one new Practice Note during 2016, Practice Note – Strata Schemes Development Proceedings (which commenced 30 November 2016).

It is the first Practice Note governing Strata Schemes Development proceedings in the Court. The purpose of the practice note is to set out the case management procedures for the just, quick and cheap resolution of Strata Scheme Development proceedings in Classes 2 and 3 of the Court's jurisdiction.

New Approval of Forms

On 16 February 2016, the Chief Judge issued a new Approval of Forms. The new approval:

- Sets out the forms to be used for commencing appeals, applications for leave to appeal, and cross-appeals in proceedings in Classes 6 and 7.
- Approves the use of a Summons (Judicial Review) (UCPR Form 85) for commencing proceedings for or in the nature of judicial review in Class 4 or 8, consistent with Part 59 of the *Uniform Civil Procedure Rules 2005*.

New information on the Court's website

Following the Court's commencement of use of Online Registry on 23 May 2016, the Court's website was updated to provide resources to assist with registering for Online Registry, using Online Registry and using Online Court.

On 22 September 2016, the Registrar published a new handout on online services, *Land and Environment Court: Online Services Overview*. The handout includes information and frequently asked questions about Online Court and Online Registry.

The Court introduced new webpages on Strata Schemes Development proceedings. The new section of the Court's website describes how cases under the *Strata Schemes Development Act 2015* in Classes 2 and 3 are started and dealt with by the Land and Environment Court.

The pages outline:

- The types of cases that can be started in Classes 2 and 3 and how they are started;
- The class that each type of case should be started in;
- Who can commence proceedings;
- How and when you need to lodge your application to commence a case;
- How to participate in the case if you have been provided with a copy of the application and don't know what to do next;
- What to expect during the court process; and
- Helpful materials.

New technology

On 23 May 2016, the Court's internal case management system was replaced by JusticeLink, and the eCourt system was replaced by the external-facing website, NSW Online Registry, which includes Online Court.

The Online Registry allows solicitors, barristers and unrepresented parties to access court information for cases in which they appear, such as documents filed, court orders and future listing dates. Solicitors and self-represented parties can also use the Online Registry to file forms online. 43 forms are available to be filed online, 24 hours a day, with the filed document sent by email to the filing party and recorded in the Online Registry in a turnaround time of a few minutes.

The Court's eCallover and eCourt request system were replaced by Online Court, which sits within the Online Registry Website. Online Court is available to all Land and Environment Court listings in Classes

1-4 and 8, allowing parties to manage civil matters from their computer without having to set foot in court, in the same way that they did through eCourt.

The Land and Environment Court Clinic

The Land and Environment Court Clinic is a clinical placement program for law students run in conjunction with two universities, the University of New South Wales in the first half of 2016 and Macquarie University in the second half of 2016.

The students are selected to participate in a practical program which involves work with the Registry and attendance with Commissioners and Judges at hearings onsite and in court. The students are engaged in administrative and research tasks as well as active participation in litigation and other dispute resolution procedures. The experience is an interactive learning experience and complements the Court's outreach activities.

Students engage with Registry and Court personnel to highlight the Court's support for access to justice in its practice and procedures. Practice and ethical matters may be considered by students through observation of the court process, interactions with the public at the Registry counter and detailed debriefing with Court personnel. The experiential learning is supported by a seminar series provided in part by Court staff.

Student reflections revealed that the experience was highly valued and rewarding. Comments include:

"Spending time at the NSW Land & Environment Court as part of my University law experience provided me with a unique opportunity to view the

court and its operations. Observing, communicating and interacting with court staff and legal representatives such as barristers meant that I was able to obtain a first-hand understanding of the application of planning and environmental law principles, and the key issues that typically arise in proceedings including case management, production of evidence and dealing with the public. The opportunity was very enjoyable and strengthened my interest in environmental and planning law.”

The clinical program between the Court and the universities was dynamic and of multi-dimensional benefit for all participants.

Following plans made with Macquarie University within the 2015 program to develop a pilot help service for self-represented litigants in 2015, the Tree Helpdesk was established in 2016. The student helpdesk is operated by Macquarie University students and staff to provide assistance with tree dispute matters. It is an independent service from the Land and Environment Court.

Maintenance of library services

Library Services has continued to support the work of the Land and Environment Court in a number of ways: providing hardcopy and electronic legal research materials, supplying an extended hours reference service, providing Caselaw NSW support and legal research training for court staff.

Implementing the International Framework for Court Excellence

In late 2008, the Court agreed to adopt and to implement the International Framework for Court Excellence. The Framework was

developed by an International Consortium for Court Excellence including the Australasian Institute of Judicial Administration, Federal Judicial Center (USA), National Center for State Courts (USA) and Subordinate Courts of Singapore, assisted by the European Commission for the Efficiency of Justice and other organisations. The Framework provides a methodology for assessing a court's performance against seven areas of court excellence and guidance for courts intending to improve their performance. The Framework takes a holistic approach to court performance. It requires a whole-court approach to delivering court excellence rather than simply presenting a limited range of performance measures directed to limited aspects of court activity.

The seven areas of court excellence are:

1. Court leadership and management:

To provide organisational leadership that promotes a proactive and professional management culture, pursues innovation and is accountable and open.

2. Court planning and policies:

To formulate, implement and review plans and policies that focus on achieving the Court's purpose and improving the quality of its performance.

3. Court proceedings:

To ensure the Court's proceedings and dispute resolution services are fair, effective and efficient.

4. Public trust and confidence:

To maintain and reinforce public trust and confidence in the Court and the administration of justice.

5. User satisfaction:

To understand and take into account the needs and perceptions of its users relating to the Court's purpose.

6. Court resources:

To manage the Court's human, material and financial resources properly, effectively and with the aim of gaining the best value.

7. Affordable and accessible services:

To provide practical and affordable access to information, court processes and services.

In 2009 and 2011, the Court undertook the self-assessment process in accordance with the Framework. The process and results were summarised in the Court's 2009 and 2011 Annual Reviews. As the Framework envisages, the Court is using the results of the self-assessment processes in 2009 and 2011 to identify areas which appear to be in most need of attention and to focus on improvement in those areas.

In 2016, the Court continued implementation of actions to improve the Court's performance in each of the seven areas of court excellence. In addition to continuing the actions described in the 2013, 2014 and 2015 Annual Reviews, the Court has undertaken the following actions, grouped under the areas of court excellence:

1. Court leadership and management:

- continuing to demonstrate external orientation of the Court by communicating and consulting on the Court's vision, goals, programmes and outcomes, in particular with respect to new jurisdiction and revised practice and procedure;
- involving all court personnel in advancing the Court's purpose and strategies, including by regular meetings, regular provision of information and performance review;
- improving case registration and case management systems.

2. Court planning and policies

- changes to Court legislation confer jurisdiction to deal with strata scheme development proceedings;
- amending Court rules to improve practice and procedure for criminal appeals from the Local Court, and to implement the new electronic case management system;
- adopting a new practice note for strata scheme development proceedings;
- adopting new forms for commencing criminal appeals and juridical review proceedings.

3. Court proceedings:

- monitoring, measuring and managing the timeliness and efficiency of the resolution of different types of proceedings, including continuous collection and regular review of case processing statistics;
- continuing monitoring and management of delays in reserved judgments.

4. Public trust and confidence and

5. User satisfaction:

- continuing publication on a quarterly basis of a court newsletter with the latest legislation, judicial decisions and changes in practice and procedure;
- continuing to report on the Court's performance in the Annual Review on the areas of court excellence;
- continually updating the Court's website to improve accessibility and usability and the information available, including expanding the webpages in the special areas of jurisdiction and updating relevant case law and facts.

6. Court resources:

- maintaining the Court's human resources, by appointment of new judges, commissioners and acting commissioners;

-
- continuing and extending the professional development programme for judges and commissioners, as explained in Chapter 6;
 - undertaking training and education of judges' tipstaves and researchers, and registry staff in the different types of matters and their resolution, and in the Framework.
 - establishing new electronic case management systems, including JusticeLink and NSW Online Registry.

7. Affordable and accessible services:

- regular monitoring and review of case processing statistics, case management and court practice and procedure with a view to reducing private and public costs of litigation.

Monitoring access to and use of the Court's decisions

The Court, as part of its implementation of the International Framework for Court Excellence, commissioned a project with the Australasian Legal Information Institute (AustLII) to use AustLII's databases to generate relevant metrics and statistics concerning the Court. These provide information concerning the frequency and nature of the citation of decisions of the Court by other courts or tribunals and the use made of the Court's decisions by academic journals that are publicly electronically accessible. The project also enables extraction of information about what are the most frequently cited decisions of the Court as well as about the general rate of accessing the Court's cases through AustLII's databases. The information that is contained in the citations by database section is collected on an accrual basis using 2010 as the base year.

The data is available on a calendar year basis and links for the data for the years ending 31 December for each of 2010, 2011, 2012, 2013, 2014, 2015 and 2016 are available on the Court's website at Publications and Resources then Database metrics and statistics.

From the seven years of data available from the project, it can be seen that there remains a continuing widespread citation of decisions of this Court in other jurisdictions. For example, in the base year (2010) this Court's decisions had been cited 94 times in decisions of courts and tribunals in Western Australia (including 11 times in the Western Australian Court of Appeal). By the end of 2016, decisions of this Court had been cited 142 times, being a further 48 times by courts and tribunals in Western Australia. Similar positions apply to other Australian jurisdictions as can be seen by a comparison between the December 2016 metrics and those of December 2010.

Although the data able to be accessed internationally by AustLII for the purposes of preparing the metrics is comparatively limited, decisions of this Court were cited 3,930 times in Australia and were also cited four times by New Zealand courts and once by South African courts.

The full range of courts and tribunals (62 in total) that have cited cases from this Court's AustLII database can be seen by accessing the December 2016 metrics on the Court's website at http://www.lec.justice.nsw.gov.au/Pages/publications/database_metrics_and_statistics.aspx

Sentencing database for environmental offences

The Court, in conjunction with the Judicial Commission of New South Wales, established in 2008 the world's first sentencing database for environmental offences, as part of the Judicial Information Research System (JIRS). Sentencing statistics for environmental offences display sentencing graphs and a range of objective and subjective features relevant to environmental offences. The user is able to access directly the remarks on sentencing behind each graph.

In 2016, the Court continued to provide statistics on sentences imposed by the Court in the year for environmental offences and for contempt proceedings. The statistics were loaded promptly onto JIRS. To ensure accuracy, the sentence statistics were audited on a quarterly basis by the Judicial Commission. The audits revealed satisfactory results.

5 Court Performance

- Overall caseload
- Court performance by class of jurisdiction
- Measuring Court performance
- Output indicators of access to justice
 - Affordability
 - Accessibility
 - Responsiveness to the needs of users
- Output indicators of effectiveness and efficiency
 - Backlog indicator
 - Time standards for finalisation of cases
 - Time standards for delivery of reserved judgments
 - Inquiries about delays in reserved judgments
 - Clearance rate
 - Attendance indicator
- Appeals
- Complaints
 - Complaints received and finalised
 - Patterns in complaints

Overall caseload

The comparative caseload statistics between 2012 and 2016 are summarised in Table 5.1.

Table 5.1 Caseload Statistics

	2012	2013	2014	2015	2016
Class 1					
Registrations	625	521	692	794	842
Restored	11	22	10	15	4
Pre-Trial Disposals	524	386	468	585	705
Disposed by Hearing	196	135	124	158	127
Pending	188	211	320	384	398
Class 2					
Registrations	135	114	103	143	117
Restored	10	7	7	13	5
Pre-Trial Disposals	47	40	41	62	36
Disposed by Hearing	105	86	77	84	94
Pending	42	37	29	40	32
Class 3					
Registrations	325	202	87	108	156
Restored	11	7	21	8	10
Pre-Trial Disposals	184	171	267	68	120
Disposed by Hearing	34	39	55	32	17
Pending	288	284	71	90	121
Class 4					
Registrations	123	102	133	124	133
Restored	34	27	13	15	14
Pre-Trial Disposals	86	75	91	99	101
Disposed by Hearing	97	52	44	48	55
Pending	81	86	96	90	84
Class 5					
Registrations	57	74	74	47	52
Restored	16	3	2	2	2
Pre-Trial Disposals	63	11	7	9	27
Disposed by Hearing	61	48	42	70	35
Pending	72	90	118	89	81

Classes 6 & 7

Registrations	10	9	6	11	19
Restored	0	0	0	3	0
Pre-Trial Disposals	2	3	0	0	4
Disposed by Hearing	7	5	4	17	9
Pending	5	6	8	5	11

Class 8

Registrations	7	2	9	10	3
Restored	2	2	1	2	0
Pre-Trial Disposals	0	1	0	0	7
Disposed by Hearing	3	7	7	10	10
Pending	6	4	7	9	2

TOTAL

Registrations	1,282	1,024	1,104	1,237	1,322
Restored	84	68	54	58	35

TOTAL REGISTRATIONS

	1,366	1,092	1,158	1,295	1,357
Pre-Trial Disposals	906	687	874	823	1,000
Disposed by Hearing	503	372	353	419	340

TOTAL FINALISATIONS

	1,409	1,059	1,227	1,242	1,340
Pending	684	717	649	705	729

Table 5.1 shows the following trends:

- Total registrations and restorations (1,357) have increased since 2015, mainly due to the increase in Class 1 and Class 3 registrations.
- Total finalisations (1,340) increased from the low in 2013 to be slightly higher than finalisations in 2015.
- Total finalisations (1,340) were lower than total registrations (1,357) in 2016, resulting in the total pending caseload (729) increasing in 2016.
- Merits review and other civil proceedings finalised in Classes 1, 2 and 3 (1,099) comprised 82% of the Court's finalised caseload (1,340) in 2016.
- Civil and criminal proceedings finalised in Classes 4, 5, 6, 7 and 8 (241) comprised 18% of the Court's finalised caseload (1,340) in 2016.
- The means of finalisation in 2016 were 75% pre-trial disposals (including by use of alternative dispute resolution processes and negotiated settlement) and 25% by adjudication by the Court. This is an increase in pre-trial disposals from 2015.

Table 5.2 Means of Finalisation – All Matters

	2012	2013	2014	2015	2016
Total matters finalised – all classes	1,409	1,059	1,227	1,242	1,340
Total pre-trial finalisations	906	687	874	823	1,000
% matters finalised pre-trial	64	65	71	66	75

The means of finalisation for proceedings in Class 1, 2 and 3 included s 34 and s 34AA conciliation conferences and on-site hearings (mainly for Class 1 and 2 proceedings). As Table 5.3 shows, 48% of

appeals in Classes 1, 2 and 3 were finalised by these means. Of the total of 532 matters, 447 were finalised by s 34 and s 34AA conciliation conferences and 85 matters by on-site hearings.

Table 5.3 Means of Finalisation – Classes 1, 2 & 3

	2012	2013	2014	2015	2016
Total matters finalised	1,090	857	1,032	989	1,099
s 34 and s 34AA conferences and on-site hearings	399	345	363	444	532
% s 34 and s 34AA and other matters finalised on-site	36.6	40.3	35.1	44.9	48.4

Court performance by class of jurisdiction

A brief summary of the Court's performance in 2016 for each of the eight classes of jurisdiction is provided.

Class 1

Registrations and restorations of Class 1 matters in 2016 increased by 5%, finalisations increased by 12%, and the pending caseload increased by 3% from 2015. Class 1 registrations and restorations represent 62% of all filings in the Court in 2016.

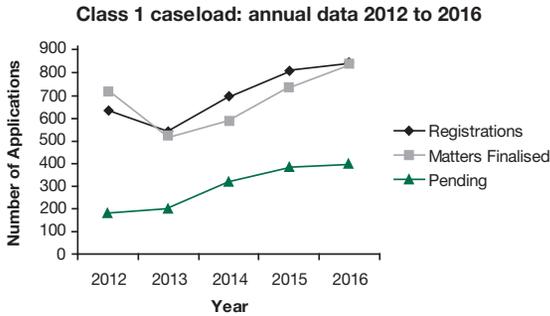
Class 1 matters constitute the bulk of the Court's finalised caseload (62%). 65% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating to development applications. 58% of the

appeals under s 97 were applications where councils had not determined the development application within the statutory time period (known as "deemed refusals").

Of the remaining matters finalised in 2016, 16% were applications to modify a development consent under s 96 of the *Environmental Planning and Assessment Act 1979* and 11% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Applications for costs, appeals under s 56A of the Court Act against a Commissioner's decision, and prevention or remediation notices under pollution legislation constituted the remaining matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2012 to 2016.

Figure 5.1

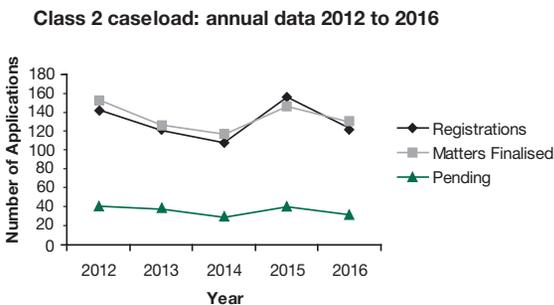


Class 2

Class 2 registrations and restorations in 2016 decreased by 22% from 2015 and represented 9% of total registrations in the Court in 2016. The number of Class 2 matters finalised in 2016 represented 10% of the Court's finalised caseload (down 11% on 2015). These are overwhelmingly applications under the *Trees (Disputes Between Neighbours) Act 2006*.

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2012 to 2016.

Figure 5.2



Class 3

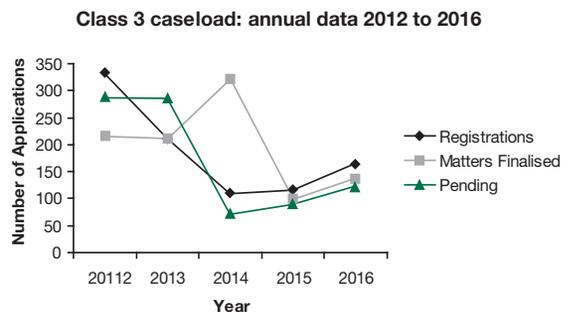
Class 3 of the Court's jurisdiction encompasses a range of proceedings including claims for compensation as a result of the compulsory acquisition of land, valuation and rating appeals and some Aboriginal land rights matters.

Registrations and restorations in Class 3 increased by 44% in 2016. Valuation and rating appeals constituted 35% of new Class 3 appeals in 2016. Compensation claims for compulsory acquisition of land constituted 50% of all Class 3 appeals registered in 2016.

Of the matters finalised in 2016, 27% were valuation or rating appeals, 51% were compensation claims and 22% were other matters. There was a 36% decrease in completions from 2015, and the pending caseload increased by 36% from 2015.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2012 and 2016.

Figure 5.3

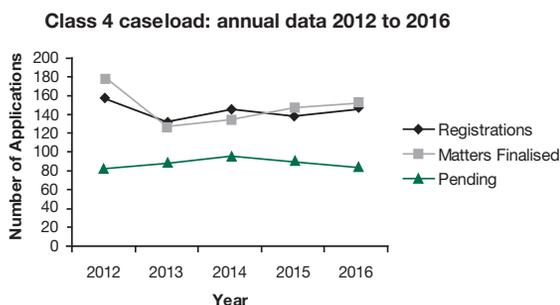


Class 4

Class 4 registrations and restorations decreased by 7% and finalisations increased by 5% in 2016 resulting in the pending caseload decreasing by 6%. Class 4 matters finalised in 2016 constituted 11% of the Court's finalised caseload. Of the Class 4 matters finalised in 2016, 57% were initiated by councils.

Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2012 and 2016.

Figure 5.4



Class 5

Class 5 registrations and restorations increased by 11% in 2016. The Environment Protection Authority/Office of Environment and Heritage initiated 75% of all new registrations. The number of matters initiated by local councils increased to 23%, up from 13% in 2015.

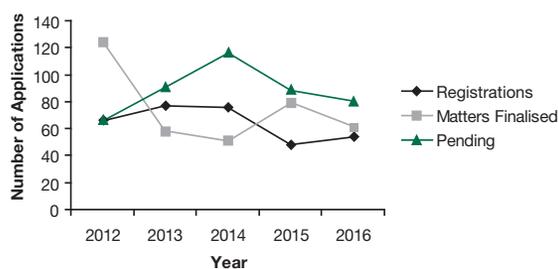
In 2016, 22% less matters were finalised. Of the 35 matters finalised by hearings in 2016, convictions were recorded in 26, 2 were withdrawn and 32 were dismissed.

Fines for convictions and remediation orders ranged from \$2,500 for transporting waste to a place not a lawful waste facility to \$100,000 for use of a premises as a waste facility without lawful authority. No community service orders were issued in 2016.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2012 to 2016.

Figure 5.5

Class 5 caseload: annual data 2012 to 2016



Classes 6 and 7

Fourteen new Class 6 appeals were filed in 2016, 4 of which were finalised. There were 5 Class 7 appeals before the Court in 2016, all of which were finalised.

Class 8

Three mining matters were filed in 2016, 2 of which were finalised. Two pending matters were completed. The pending caseload decreased by 7 matters.

Measuring Court performance

The Court has a statutory duty to facilitate the just, quick and cheap resolution of the real issues in civil proceedings in the Court. The Court's practice and procedure is designed to achieve this overriding purpose. In order to determine whether this purpose is being fulfilled, the Court needs to monitor and measure performance.

The objectives of court administration are equity, effectiveness and efficiency. Various performance indicators can be used to evaluate the Court's achievement of these objectives of court administration.

The objectives of equity and effectiveness involve ensuring access to justice. Access to justice can be evaluated by reference to various criteria, both quantitative and qualitative. These include affordability, accessibility, responsiveness to the needs of users, and timeliness and delay measured by a backlog indicator and compliance with time standards. The objective of efficiency can be evaluated by output indicators including an attendance indicator and a clearance rate indicator.

Output indicators of access to justice

Affordability

Access to justice is facilitated by ensuring affordability of litigation in the Court. One indicator of affordability is the fees paid by applicants. Lower court fees help keep courts accessible to those with less financial means. However, ensuring a high standard of court administration service quality (so as to achieve the objective of effectiveness) requires financial resources. These days, a primary source of revenue to fund court administration is court fees. The Land and

Environment Court is no exception. It was necessary in 2016 to increase court fees by 2.2% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2016). The fee for issuing a subpoena was increased by 25% and fees were introduced for conducting a civil litigation search, to be charged for each name searched, and for requiring documents to be amended on the Online Registry. Notwithstanding the increase, the increased court fees still meet criteria of equity.

First, the court fees differentiate having regard to the nature of applicants and their inherent likely ability to pay. Individuals are likely to have less financial resources than corporations and hence the court fees for individuals are about half of those for corporations.

Secondly, the court fees vary depending on the nature of the proceedings. For example, the court fees for proceedings concerning a dispute over trees under the *Trees (Disputes Between Neighbours) Act 2006* have been set low, equivalent to Local Court fees, reflecting the fact that these proceedings are likely to be between individual neighbours.

Thirdly, in development appeals in Class 1, the quantum of court fees increases in step with increases in the value of the development (and the likely profit to the developer). Similarly, in compensation claims in Class 3, the court fees increased in step with the increases in the amount of compensation claimed.

Fourthly, the increased court fees bring about parity with the court fees for equivalent proceedings in other courts. The court fees for tree disputes are equivalent to Local Court fees reflecting the fact that the nature of the dispute is one that the Local Court might entertain. Similarly, proceedings

in Class 4 for civil enforcement and judicial review are of the nature of proceedings in, and indeed before the establishment of the Land and Environment Court were conducted in, the Supreme Court. The court fees for these proceedings are comparable to those charged by the Supreme Court.

Finally, the Registrar retains a discretion to waive or vary the court fees in cases of hardship or in the interests of justice.

It is also important to note that court fees are only part of the costs faced by litigants. Legal fees and experts' fees are far more significant costs of litigation and are the principal indicator of affordability of access to the Court. The Court continues to improve its practice and procedure with the intention of reducing these significant costs and hence improve the affordability of litigation in the Court.

Accessibility

The Court has adopted a number of measures to ensure accessibility including geographical accessibility, access for people with disabilities, access to help and information, access for unrepresented litigants, access to alternative dispute resolution mechanisms and facilitating public participation.

Geographical accessibility

Geographical accessibility concerns ensuring parties and their representatives and witnesses are able to access the Court in geographical terms. New South Wales is a large state. The Land and Environment Court is located in Sydney which is a considerable distance from much of the population. To overcome geographical accessibility problems, the Court has adopted a number of measures, including conducting directions hearings and

other attendances before the final hearing by means of telephone or Online Court (formerly eCourt); enabling communication between the Court and parties and their legal representatives by email and facsimile; conducting final hearings on the site of the dispute; and sitting in country courthouses proximate to the parties and/or the subject site.

Up until 2016, a matter was counted as a country matter if it was outside the area bordered by the local government areas of Wollongong, Blue Mountains and Gosford. From 2016, a matter is counted as a country matter if it is in a local government area outside the Greater Sydney region. In 2016, 24% of matters finalised were country matters.

The Court identifies and case manages country matters in a particular way.

Firstly, for attendances before final hearings, the Court has established the facility of a telephone directions hearing. This type of directions hearing takes place in a court equipped with conference call equipment where the parties or their representatives can participate in the court attendance whilst remaining in their geographical location. Most telephone directions hearings held by the Court involve parties and their legal representatives in country matters.

Secondly, the Court pioneered the use of eCourt, now Online Court, directions hearings. This involves the parties or their representatives posting electronic requests to the Registrar using the internet and the Registrar responding. This also mitigates the tyranny of distance. Again, Online Court directions hearings are used extensively in country matters. Parties appeared by Online Court directions hearing in 50% of Class 1 country matters and 58% of Class 3 country matters in 2016.

Table 5.4 shows the percentage of pre-hearing attendances conducted by eCourt or Online Court directions hearings and telephone directions hearings in Classes 1-4 in 2016.

Table 5.4 Online Court and Telephone Directions Hearings

Class	No of cases	Total pre-hearing attendances	% Online Court directions hearings	% Telephone directions hearings
1	817	4,319	18	5
2	127	274	24	13
3	136	852	22	0.5
4	147	941	10	0.6
All	1,227	6,386	18	4

Telephone conferences are used more than this as these figures are only for directions hearings before a Registrar or a Judge. The figures do not include the many adjourned s 34 conciliation conferences conducted by telephone.

Thirdly, proceedings in Classes 1, 2 and 3 are commonly referred to conciliation under s 34 of the Court Act. Conciliation conferences are frequently held on the site of the dispute. 53% of Class 1 country matters and 32% of Class 3 country matters had a s 34 conciliation conference.

Fourthly, conduct of the whole or part of a hearing on the site of the dispute also means that the Court comes to the litigants. An official on-site hearing involves conducting the whole hearing on-site. This type of hearing is required where there has been a direction that an appeal under ss 96, 96AA, 97, 121ZK or 149F of the *Environmental Planning and Assessment Act 1979* or s 7 of the *Trees (Disputes Between Neighbours) Act 2006* be conducted as an on-site hearing. The

hearing is conducted as a conference presided over by a Commissioner on the site of the development. In 2016, 9% of matters (in Classes 1 and 2) were conducted as an on-site hearing, of which 24% were country matters. There were no on-site hearings in Class 1 matters in 2016.

However, even for other hearings which may be conducted as a court hearing, it is the Court's standard practice that the hearing commence at 9.30am on-site. This enables not only a view of the site and surrounds but also the taking of evidence from residents and other persons on the site. This facilitates participation in the proceedings by witnesses and avoids the necessity for their attendance in the Court in Sydney. Nearly all country matters in Classes 1, 2 and 3 that were conducted as a court hearing still had an on-site view in the country.

Fifthly, the Court regularly holds court hearings in country locations. Table 5.5 shows hearings held in a country courthouse for 2016.

Table 5.5 Country hearings in courthouses

Number of Hearings

Courthouse	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 8
Ballina	2						
Cooma	1						
Coonabarrabran	1						
Gunnadah				1			
Lightning Ridge							1
Moree			1				
Murwillumbah	1						
Narrabri	1						
Newcastle	1						
Picton	3						
Port Macquarie	1						
Toronto	1						
Tweed	1						
Wollongong	2						
TOTAL	15		1	1			1

Access for persons with disabilities

The Court has a disability strategic plan that aims to ensure that all members of the community have equal access to the Court's services and programmes. The Court is able to make special arrangements for witnesses with special needs. The Court can be accessed by persons with a disability. The Land and Environment Court website contains a special page, under the tab 'Facilities & Support', outlining the disability services provided by the Court.

Access to help and information

The Court facilitates access to help and provides information to parties about the Court and its organisation, resources and services, the Court's practices and procedures, its forms and fees, court lists

and judgments, publications, speeches and media releases, and self-help information, amongst other information. Primarily it does this by its website. However, the Court also has guides and other information available at the counter. Registry staff assist parties and practitioners, answer questions and provide information. Registry staff cannot provide legal advice.

The Local Courts throughout New South Wales also have information on the Land and Environment Court and documents are able to be filed in those Courts, which are passed on to the Land and Environment Court.

The provision of such help and information facilitates access to justice and allows the people who use the judicial system to understand it.

Access for unrepresented litigants

The Court also makes special efforts to assist unrepresented litigants, through its website and its published information and fact sheets, and by the Registry staff. The Court has a special guide, under the tab 'Publications & Resources', for Litigants in Person in the Land and Environment Court of New South Wales. The guide contains information on:

- The Court's jurisdiction;
- Legal advice and assistance – a referral guide;
- The Court's schedule of fees;
- Application form to postpone, waive or remit Court fees;
- The availability of interpreters;
- Disability access information;
- User feedback on Land and Environment Court services;
- Information about the Court's website; and
- Contact information for the Court.

The Court's website also has on its home page special pages on: 'Your legal problem is about', 'Types of cases', 'Resolving Disputes', 'Coming to the court', 'Practice & Procedure', 'Forms & Fees', 'Land and Environment Court Decisions', amongst others.

Access to Alternative Dispute Resolution

The Court has been a pioneer in providing alternative dispute resolution services. The availability of alternative dispute resolution mechanisms allows the tailoring of mechanisms to the needs of disputants and the nature of the evidence.

When the Land and Environment Court was established in 1980 there was the facility for conciliation conferences under s 34 of the Court Act. These were curtailed in 2002 when on-site hearings were provided for but in 2006 the facility of conciliation conferences was extended to all matters in Classes 1, 2 and 3. Since then there has been a significant increase in utilisation of conciliation conferences (see Table 3.1).

The Court provides mediation services. In 2016, 7 of the 8 full-time Commissioners, a number of the Acting Commissioners and the Registrar and Assistant Registrar of the Court were nationally accredited mediators and could provide in-house mediation for parties. In addition, the Court encourages and will make appropriate arrangements for mediation by external mediators. Informal mechanisms such as case management conferences also encourage negotiation and settlement of matters.

The Court's website, under the tab on the home page of 'Resolving disputes', contains information explaining the alternative dispute resolution mechanisms and providing links to other sites explaining ADR methods including mediation.

Facilitating public participation

Access to justice can also be facilitated by the Court ensuring that its practice and procedure promote and do not impede access by all. This involves careful identification and removal of barriers to participation, including by the public. Procedural law dealing with standing to sue, interlocutory injunctions (particularly undertaking for damages), security for costs, laches and costs of proceedings, to give some examples, can either impede or facilitate public access to justice.

The Court's decisions in these matters have generally been to facilitate public access to the courts. The Land and Environment Court Rules 2007 (Part 4 rule 4.2) also allow the Court not to require an undertaking as to damages or order security for costs or order costs against an unsuccessful party if satisfied that proceedings have been brought in the public interest.

Responsiveness to the needs of users

Access to justice can also be facilitated by the Court taking a more user-orientated approach. The justice system should be more responsive to the needs and expectations of people who come into contact with the system. The principle of user orientation implies that special steps should be taken to ensure that the Court takes specific measures both to assist people to understand the way the institution works and to improve the facilities and services available to members of the public. These steps require sensitivity to the needs of particular groups.

The measures adopted by the Court for ensuring accessibility (discussed above) also make the Court more responsive to the needs and expectations of people who come into contact with the Court. The Court also consults with court users and the community to assist the Court to be responsive to the needs of users.

The Court has a Court Users Group to maintain communication with, and feedback from, Court users as to the practice and procedure and the administration of the Court. Information on, and membership of, the Court Users Group is in Appendix 1. In 2009, the Court established a specialised Mining Court Users Group. Court Users Groups assist the Court to be responsive to the needs of those who use it.

The Chief Judge has held informal gatherings with practitioners and experts who use the Court and delivered numerous speeches where the Court's practices and procedures have been discussed.

In 2016, the Judges, Commissioners and the Registrar participated in numerous conferences and seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

Output indicators of effectiveness and efficiency

The effectiveness and efficiency of the Court is able to be measured by reference to the output indicators of backlog indicator, time standards for finalisation of cases, time standards for delivery of judgments, clearance rate and attendance indicator.

Backlog indicator

The backlog indicator is an output indicator of case processing timeliness. It is derived by comparing the age (in elapsed time from lodgment) of the Court's caseload against time standards. The Court adopted its own standards for the different classes of its jurisdiction in 1996. These are:

- Classes 1, 2 and 3: 95% of applications should be disposed of within 6 months of filing.
- Classes 4, 5, 6, 7 and 8: 95% of applications should be disposed of within 8 months of filing.

These standards are far stricter than the national standards used by the Productivity Commission in its annual *Report on Government Services*.

The national standards are:

- No more than 10% of lodgments pending completion are to be more than 12 months old (ie. 90% disposed of within 12 months).
- No lodgments pending completion are to be more than 24 months old (i.e. 100% disposed of within 24 months).

Performance relative to the timeliness standards indicates effective management of caseloads and court accessibility.

Time taken to process cases is not necessarily due to court administration delay. Some delays are caused by factors other than those related to the workload of the Court. These include delay by parties, unavailability of a witness, other litigation taking precedence, and appeals against interim rulings.

The results of the backlog indicator measured against the Land and Environment Court time standards for 2016 are set out in Table 5.6.

Table 5.6 Backlog Indicator (LEC time standards)

	Unit	LEC Standards	2012	2013	2014	2015	2016
Class 1							
Pending caseload	no.		188	210	320	384	398
Cases > 6 months	%	5	14.4	14.8	14.1	17.1	22.2
Cases > 12 months	%	0	3.2	5.2	4.1	5.7	5.5
Class 2							
Pending caseload	no.		42	37	29	40	32
Cases > 6 months	%	5	0	0	3.4	0	9.4
Cases > 12 months	%	0	0	0	0	0	0
Class 3							
Pending caseload	no.		288	284	71	90	121
Cases > 6 months	%	5	63.2	79.9	46.5	27.8	39.3
Cases > 12 months	%	0	11.8	62.0	26.8	13.3	19.7
Class 4							
Pending caseload	no.		81	86	96	90	84
Cases > 8 months	%	5	40.7	38.4	39.6	30.0	32.9
Cases > 16 months	%	0	18.5	23.3	17.7	16.7	15.3

Class 5

Pending caseload	no.		72	90	118	89	81
Cases > 8 months	%	5	50.0	58.9	56.8	69.7	48.1
Cases > 16 months	%	0	20.8	31.1	33.1	30.3	21.0

Class 6

Pending caseload	no.		5	6	8	5	11
Cases > 8 months	%	5	40.0	16.7	50.0	20.0	0
Cases > 16 months	%	0	40.0	0	37.5	0	0

Class 8

Pending caseload	no.		6	4	7	9	2
Cases > 8 months	%	5	33.3	50.0	28.6	11.1	50.0
Cases > 16 months	%	0	0	0	14.3	0	0

Class 1- 3

Pending caseload	no.		518	531	420	514	551
Cases > 6 months	%	5	40.5	48.6	18.8	17.7	25.4
Cases > 12 months	%	0	7.7	35.2	7.6	6.6	8.3

Class 4 – 8

Pending caseload	no.		166	186	229	193	178
Cases > 8 months	%	5	44.0	47.8	48.5	47.2	38.0
Cases > 16 months	%	0	19.8	25.8	26.2	21.8	16.8

These backlog figures need some explanation:

■ Class 1: The backlog figures for pending caseloads greater than 6 months increased in 2016 compared to 2015 while the backlog figures for pending caseloads greater than 12 months decreased slightly in 2016 compared to 2015. The total pending caseload in Class 1 increased during 2016 as a result of registrations exceeding finalisations. The timeliness of case processing of Class 1 matters therefore decreased in 2016 compared to 2015.

■ Class 2: There were no cases pending in Class 2 for more than 12 months but there was an increase in the backlog figures for pending caseloads greater than 6 months in 2016 from no cases in 2015. The pending caseload decreased.

■ Class 3: The backlog figures in 2016 for pending caseload greater than 6 months increased to 39.3% and for cases greater than 12 months also increased to 19.7%. This increase is from five year lows in 2015. Total pending caseload increased. Hence, the timeliness of case processing of Class 3 matters decreased in 2016.

- Class 4: There was a slight increase in the backlog figure for pending caseload exceeding 8 months and a slight decrease for pending caseload greater than 16 months to the lowest figure in the last five years. The total pending caseload in Class 4 decreased marginally. The timeliness of case processing of Class 4 slightly improved in 2016.
- Class 5: The backlog figures for pending caseload exceeding the 8 month standard and pending caseload greater than 16 months both decreased. The total pending caseload in Class 5 decreased as a result of finalisations exceeding

registrations. The timeliness of case processing of Class 5 matters therefore improved in 2016.

- Class 6: There were only a small number of appeals in Class 6. There no appeal cases greater than 8 months.
- Class 8: There was a decrease in pending caseload by seven cases. One case was pending greater than 8 months and no case was pending for greater than 16 months.

If the national time standards are used, the results of the backlog indicator for the Court in 2016 are as shown in the table below:

Table 5.7 Backlog indicator (national time standards)

	Unit	National Standards	2012	2013	2014	2015	2016
Class 1							
Pending caseload	no.		188	210	320	384	398
Cases > 12 months	%	10	3.2	5.2	4.1	5.7	5.5
Cases > 24 months	%	0	0.5	1.4	0.6	0.8	0
Class 2							
Pending caseload	no.		42	37	29	40	32
Cases > 12 months	%	10	0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0
Class 3							
Pending caseload	no.		288	284	71	90	121
Cases > 12 months	%	10	11.8	62.0	26.8	13.3	19.7
Cases > 24 months	%	0	4.5	6.2	8.5	7.8	0.8
Class 4							
Pending caseload	no.		81	86	96	90	84
Cases > 12 months	%	10	28.4	31.4	26.0	22.2	25.9
Cases > 24 months	%	0	7.4	11.6	13.5	8.9	8.2

Class 5

Pending caseload	no.		72	90	118	89	81
Cases > 12 months	%	10	34.7	44.4	50.0	58.4	44.4
Cases > 24 months	%	0	18.1	25.6	22.9	21.3	17.3

Class 6

Pending caseload	no.		5	6	8	5	11
Cases > 12 months	%	10	40.0	16.7	50.0	20.0	0
Cases > 24 months	%	0	0	0	0	0	0

Class 8

Pending caseload	no.		2	6	4	9	2
Cases > 12 months	%	10	0	16.7	50.0	0	50.0
Cases > 24 months	%	0	0	0	0	0	0

This table shows that the Court's performance in Classes 1, 2 and 6 better or meets the national standard for 12 months and 24 months. The Court's performance in Class 3 has declined in 2016 compared to 2015 for the standard for 12 months, though it was still an improvement compared to 2013 and 2014, and significantly improved for the standard for 24 months, to be the Court's best result in the past five years. The Court's performance in Class 4 is worse than the national standard. The Court's performance in Class 5 is below the national standard for 12 months and 24 months but has improved from 2014 and 2015. The Court's performance in Class 8 declined from 2015 for the standard for 12 months, but there was only one case involved in Class 8.

The reasons for the Court's performance are given in the explanation of the backlog indicator (LEC time standards).

Time standards for finalisation of cases

The backlog indicator is a measure of the timeliness of the pending caseload. The Court also measures the timeliness of completed cases by comparing the time taken for finalisation of cases in each class to the Court's time standards. The higher the percentage of cases completed by each time standard and the shorter the time period to complete 95% of the cases, the better the Court's performance. Table 5.8 sets out the Court's performance in finalising cases in each class in compliance with the Court's time standards for the period 2011-2015.

Table 5.8 Finalisation of cases – compliance with time standards by Class

	2012	2013	2014	2015	2016
Class 1					
No. of cases	720	521	592	743	832
% < 6 months	78	80	78	70	63
% < 12 months	97	97	96	96	94
95% completed within (months)	11	9	10	11	13
Class 2					
No. of cases	152	126	118	146	130
% < 6 months	93	98	97	94	93
% < 12 months	98	100	100	100	99
95% completed within (months)	6	5	5	6	6
Class 3					
No. of cases	218	211	322	100	137
% < 6 months	44	59	25	45	51
% < 12 months	79	81	38	70	80
95% completed within (months)	20	21	28	28	30
Class 4					
No. of cases	127	135	135	147	156
% < 8 months	73	73	66	64	73
% < 16 months	91	91	87	88	87
95% completed within (months)	22	25	27	28	24
Class 5					
No. of cases	124	59	49	79	62
% < 8 months	19	61	45	24	8
% < 16 months	82	90	71	38	76
95% completed within (months)	28	18	34	67	86
Class 6					
No. of cases	9	8	4	17	13
% < 8 months	100	63	100	76	85
% < 16 months	100	80	100	76	92
95% completed within (months)	6	30	8	27	13
Class 8					
No. of cases	3	8	7	10	10
% < 8 months	100	75	71	40	50
% < 16 months	100	88	71	80	90
95% completed within (months)	17	19	22	20	20

In Class 1, there was a reduction in the percentage of cases completed within 6 months and marginal reduction of the high percentage of cases completed within 12 months. There was a marginal increase of 2 months in the time taken to finalise 95% of cases. In Class 2, there was a marginal decrease in the very high percentage of cases completed within 6 and 12 months, however the time taken to finalise 95% of cases was maintained at 6 months. The table shows that in 2016, the Court improved its performance by reducing the time taken to finalise cases in Class 3 compared to 2014 and 2015. A greater percentage of Class 3 matters were completed within 6 months and 12 months. However, the time taken to complete 95% of cases increased by 2 months. In Class 4, the percentage of cases finalised in less than 8 months significantly increased from 2015 however the percentage of cases finalized in less than 16 months declined marginally and the time taken to complete 95% of the matters increased by 4 months. In Class 5, the percentage of cases finalised in less than 8 months decreased, however, the percentage of cases finalised in less than 16 months increased significantly from 2015. The time taken to complete 95% of cases increased significantly for the second year in a row. This is the poorest performance in the last five years in this Class. This correlates with the increased number of attendances in Class 5 matters in the last two years, another indicator of delay in disposing of the matters. The Court's performance in complying with time standards for Class 6 matters improved and the time taken to finalise 95% of cases decreased by 14 months. The Court's performance in Class 8 was maintained, however, the number of matters in Class 8 is small.

Time standards for delivery of reserved judgments

The Court may dispose of proceedings by judgment delivered at the conclusion of the hearing (ex tempore judgment) or at a later date when judgment is reserved by the Court (reserved judgment). A substantial number of judgments (30%) are delivered ex tempore, thereby minimising delay. To minimise delay for reserved judgments the Court has adopted time standards.

The Court's time standard for delivery of reserved judgments is determined from the date of the last day of hearing to the delivery date of the judgment. The current time standards for reserved judgments are as follows:

- 50% of reserved judgments in all classes are to be delivered within 14 days of hearing.
- 75% are to be delivered within 30 days of hearing.
- 100% are to be delivered within 90 days of hearing.

These are strict standards compared to other courts.

As Table 5.9 shows, the Court's performance in 2016 for reserved judgments being delivered within 14 days met the standard but declined for reserved judgments delivered within 30 days. For the 90 days standard, the Court's performance improved slightly compared to 2014 and 2015 and was less than the standard. The Court's performance in meeting judgment timeliness standards is an average of the performance of all individual decision-makers, both commissioners and judges, in matters in all classes of the Court's jurisdiction.

Table 5.9 Reserved judgments compliance with time standards

	Standard	2012	2013	2014	2015	2016
% delivered within 14 days	50	50	57	51	45	41
% delivered within 30 days	75	66	73	67	62	60
% delivered within 90 days	100	86	87	85	83	86

Inquiries about delays in reserved judgments

A delay in delivering a reserved judgment impedes achievement of the goal of the just, quick and cheap resolution of proceedings. One of the Court's time standards for the delivery of reserved judgments is that 100% of reserved judgments should be delivered within 90 days of the judgment being reserved, usually at the completion of the hearing.

The Court has adopted a policy on Delays in Reserved Judgments that allows a party or legal representative who is concerned that a reserved judgment has been outstanding for a period in excess of the Court's standard of 3 months, to make a written inquiry to the Chief Judge. The policy provides that

the Chief Judge will discuss each inquiry with the judicial officer involved, but without revealing the inquirer's identity to the judicial officer, to ascertain the expected timing for delivery of the reserved judgment. The Chief Judge responds to the inquirer with the expected timing provided by the judicial officer. The inquirer may make a further inquiry if the judgment is not delivered within the notified expected timing.

Table 5.10 provides information on the total number of inquiries received under the Delays in Reserved Judgments Policy and the type of case (the classes of the Court's jurisdiction) which the inquiry concerned. In a number of instances, successive inquiries have been made with respect to the same reserved judgment. Each successive inquiry is recorded as a new inquiry.

Table 5.10 Inquiries about delays in reserved judgments

	2012	2013	2014	2015	2016
Class 1	10	9	2	6	7
Class 2	1	0	1	0	2
Class 3	5	7	5	5	0
Class 4	12	11	10	7	5
Class 5	2	3	3	9	3
Classes 6 and 7	0	2	0	2	0
Class 8	0	0	0	2	0
Total	30^{*1}	32^{*2}	21^{*3}	31^{*4}	17^{*5}

*1 In 2012, 73% of inquiries (22) concerned judges' reserved judgments and 27% (8) concerned commissioners' reserved judgments.

*2 In 2013, 97% of inquiries (31) concerned judges' reserved judgments and 3% (1) concerned commissioners' reserved judgments.

*3 In 2014, 95% of inquiries (20) concerned judges' reserved judgments and 5% (1) concerned commissioners' reserved judgments.

*4 In 2015, 84% of inquiries (26) concerned judges' reserved judgments and 16% (5) concerned commissioners' reserved judgments.

*5 In 2016, 71% of inquiries (12) concerned judges' reserved judgments and 29% (5) concerned commissioners' reserved judgments.

The Chief Judge investigated each inquiry made in 2016 in accordance with the policy and responded in writing to the inquirer in a timely manner.

Clearance rate

The clearance rate is an output indicator of efficiency. It shows whether the volume of finalisations matches the volume of lodgments in the same reporting period. It indicates whether the Court's pending caseload has increased or decreased over that period. The clearance rate is derived by dividing the number of finalisations in the

reporting period by the number of lodgments in the same period. The result is multiplied by 100 to convert it to a percentage.

A figure of 100% indicates that during the reporting period the Court finalised as many cases as were lodged and the pending caseload is the same as what it was 12 months earlier. A figure of greater than 100% indicates that, during the reporting period, the Court finalised more cases than were lodged, and the pending caseload has decreased. A figure less than 100% indicates that during the reporting period, the Court finalised fewer cases than were lodged, and the pending caseload has increased. The clearance rate should be interpreted alongside finalisation data and the backlog indicator. Clearance over time should also be considered.

The clearance rate can be affected by external factors (such as those causing changes in lodgment rates) as well as by changes in the Court's case management practices.

The results of the clearance rate for the Court in each of its classes are shown in Table 5.11.

Table 5.11 Clearance rate

	2012	2013	2014	2015	2016
	%	%	%	%	%
Class 1	113.2	95.9	84.3	91.8	98.3
Class 2	104.8	104.1	107.2	93.6	106.6
Class 3	64.9	100.5	298.1	86.2	82.5
Class 4	116.6	98.4	92.5	105.8	106.1
Class 5	169.9	76.6	64.5	161.2	114.8
Class 6	90.0	88.9	66.7	121.4	68.4
Class 8	33.3	200.0	70.0	83.3	333.3

Classes 1-3	97.6	98.2	112.2	91.5	96.9
Classes 4-8	128.1	92.2	81.9	118.2	107.2
Total	103.1	97.0	106.0	95.9	98.7

These figures show that the total clearance rate for all matters increased but was marginally less than 100% (98.7%). The clearance rate for matters in Classes 4-8 remained above 100% (107.2%). The total clearance rate for matters in Classes 1-3 was less than 100% (96.9%) but did improve from 2015.

The clearance rate for matters in Class 1 (98.3%) was an improvement over 2015, reflecting the proportionately greater increase in finalisations compared to registrations, compared to 2015. However, this was still insufficient to clear the load in 2016. In Class 2, finalisations were greater than registrations in 2016, resulting in a percentage slightly above 100%. In Class 3, finalisations were less than registrations, resulting in a clearance rate of 82.5%, the lowest for four years. The clearance rate for matters in Class 4 was just above 100% due to a proportionately greater increase in finalisations compared to registrations. The lower clearance rate for Class 5 matters compared to 2015 was caused by a decrease in finalisations compared to the increase in registrations but remained above 100%. The decrease in the clearance rate in Class 6 and the very high clearance rate in Class 8 represents a difference of only a few cases.

Attendance indicator

The attendance indicator is an output indicator of efficiency where court attendances act as a proxy for input costs.

The more attendances, the greater the costs both to the parties and to public resources. The number of attendances is the number of times that parties or their representatives are required to be present in court to be heard by a judicial officer or mediator (including appointments that are adjourned or rescheduled).

The attendance indicator is presented as the median number of attendances required to reach finalisation for all cases finalised during the year, no matter when the attendance occurred.

Fewer attendances may suggest a more efficient process. However, intensive case management, although increasing the number of attendances, may have countervailing benefits. Intensive case management may maximise the prospects of settlement (and thereby reduce the parties' costs, the number of cases queuing for hearing and the flow of work to appellate courts) or may narrow the issues for hearing (thus shortening hearing time and also reducing costs and queuing time for other cases waiting for hearing). In the Land and Environment Court, increased use of the facilities of conciliation conferences and case management conferences may be means to achieve these benefits.

Table 5.12 below compares the median number of pre-hearing attendances for each class of proceedings completed in 2012-2016.

Table 5.12 5.12 Median number of pre-hearing attendances by Class

	2012	2013	2014	2015	2016
Class 1	3	4	4	4	4
Class 2	1	1	1	1	1
Class 3: (all matters)	6	5	7	5	5
Compensation claims	12	6	12	8	6
Valuation objections	6	4	6	7	2
Miscellaneous	4	6	7	6	5
Class 4	3	3	5	7	4
Class 5	7	3	5	9	10
Class 6	3	2	2	2	1
Class 8	5	4	4	4	6

The table reveals that the median number of pre-hearing attendances stayed constant for matters in Classes 1 and 2 between 2015 and 2016. The number of pre-hearing attendances for all matters in Class 3 stayed the same but decreased for compensation claims and valuation objections to the lowest figures for five years. This is a commendable result and may indicate that reforms to the case management of these matters are starting to have effect. The number of pre-hearing attendances decreased in Classes 4 and 6, indicating improvement. Regrettably, the number of attendances increased in Classes 5 and 8 from 2015. This figures for Class 5 is the worst performance in five years.

Appeals

Measuring the number of appeals from a court's decisions and their success are not appropriate or useful indicators of the quality of the decisions or of court administration. Nevertheless, as there are appeal rights from the Court's decisions, the Court should provide statistics on the exercise of the appeal rights in the review year.

There are three types of appeals that can be generated from decisions of the Court (see Figures 2.1, 2.2 and 2.3 in Chapter 2 Court Profile).

First, decisions of Commissioners in Classes 1, 2 and 3 may be appealed to a Judge of the Court pursuant to s 56A of the Court Act. Section 56A appeals are confined to appeals against decisions on a question of law and do not permit a review of the Commissioner's decision on the facts or merits. As shown in Table 5.13, in 2016, 9 s 56A appeals were commenced, 6 appeals were settled pre-hearing, 8 were completed after a hearing, and 2 remained pending at 31 December 2016.

Of the 8 appeals that were completed at hearing, 3 were upheld. This represents 1.1% of the number of matters in Classes 1, 2, 3 and 8 disposed of at a hearing by a Commissioner of the Court in 2016 (262 matters).

Table 5.13 s 56A Appeal outcomes

	2012	2013	2014	2015	2016
Total no. of appeals	29	12	17	12	9
No. finalised pre-hearing	11	2	2	0	6
No. of appeals to hearing	17	15	14	6	8
Outcome:					
Upheld	2	5	5	2	3
Dismissed	15	10	9	4	7

Secondly, appeals from decisions made by Judges in Classes 1 to 4 and 8 are heard in the Court of Appeal.

Thirdly, appeals from decisions made by Judges in Classes 5, 6 and 7 are heard in the Court of Criminal Appeal.

In previous editions of the Annual Review, the Court reported the number of appeal proceedings by reference to the Notices of Intention to Appeal, Notices of Appeal or Stated Cases lodged in the Court of Appeal and the Court of Criminal Appeal.

The Court is adopting a new approach this year and is instead reporting on the number of cases determined by the appellate courts on appeal from the Land and Environment Court. The Court's previous approach did not reflect whether, after filing the Notice of Intention to Appeal or Notice of Appeal, the matter proceeded to hearing and final determination. The previous approach also did not reflect the distinction drawn in the

legislation and rules between an appeal commenced:

- by right (e.g. against a final decision of a judge)
- by summons seeking leave to appeal (e.g interlocutory order, costs order or Judge's decision on a s 56A appeal against a Commissioner's decision) or
- [by stated case (Prosecutor appeal against a decision in the Court's criminal jurisdiction),

This new approach is reported in Table 5.14 and shows the number and types of decisions determined by the appellate courts from 2012 to 2016.

In 2016, 14 appeals were determined by the Court of Appeal on appeal from the Land and Environment Court and 1 appeal was determined by the Court of Criminal Appeal on appeal from the Land and Environment Court.

Table 5.14 Appeals determined by the appellate courts

	2012	2013	2014	2015	2016
Court of Appeal					
Appeal by right	9	7	14	12	10
Leave to appeal	4	4	4	8	4
Total matters determined	12*	11	17*	19*	14
Court of Criminal Appeal					
Appeal by right	1	1	3	0	1
Stated case, section 5AE	0	1	2	2	0
Leave to appeal	1	3	0	2	0
Total matters determined	1*	5	5	4	1

* The total reflects that an appeal was heard both as of right and by leave of the Court of Appeal or Court of Criminal Appeal

Complaints

Accountability and public trust and confidence in the Court and the administration of justice is enhanced by the availability of a procedure for making complaints about the conduct of Court members in the performance of their functions. The procedure for making complaints differs according to the Court member concerned.

Judges of the Court are judicial officers and complaints about Judges' conduct are made to the Judicial Commission of New South Wales according to the procedure in the *Judicial Officers Act 1989*.

Complaints about Commissioners, who are not judicial officers, are made to the Chief Judge of the Court. The Court has published a policy on making, examining and dealing with complaints against Commissioners. Complaints that are upheld can result in action being taken by the Chief Judge (such as counseling or the making of administrative arrangements designed to avoid repetition

of the problem) or referral to the Attorney-General for consideration of removal of the Commissioner from office.

The Court advises all complainants and the Commissioner concerned of the outcome of the examination of the complaint. Starting with the 2009 Annual Review, the Court also reports on its handling of complaints and patterns in the nature and scope of complaints.

An inquiry to the Chief Judge by parties to proceedings or their legal representatives, pursuant to the Court's Policy on Delays in Reserved Judgments, as to the expected date for delivery of reserved judgment in proceedings is not a complaint about the conduct of the Court member concerned. Similarly, an inquiry as to the expected date of publication of the written reasons for judgment given ex tempore at the conclusion of a hearing is not a complaint about the conduct of the Court member concerned. Inquiries pursuant to the Court's Policy on Delays in Reserved Judgments are discussed earlier in this chapter.

Complaints received and finalised

In 2016, the Court received 4 formal complaints.

Table 5.15 gives particulars about the complaints made and dealt with in 2016 and the outcomes.

Table 5.15 Complaint particulars

Complaints pending as at 31 December 2015	0
Complaints made during 2015	4
Total number of complaints	4
Complaints examined but dismissed	4
Complaints not dismissed but dealt with by the Chief Judge	0
Complaints referred by Chief Judge to Complaint Committee	0
Complaint withdrawn	0
Total number of complaints finalised	4
Complaints pending as at 31 December 2016	0

As can be seen from Table 5.15, the number of complaints is low. The vast majority of complaints are made after, and in relation to, the hearing and disposal of a matter by a Commissioner. In 2016, Commissioners exercised the functions of undertaking conciliations, mediations, on-site hearings or court hearings in Classes 1, 2 and 3 and 8. There were 1116 matters disposed of in 2016 in those classes. Complaints, therefore, occurred in only 0.4% of matters dealt with by Commissioners. This small proportion of complaints to matters dealt with by Commissioners is a pleasing indication of the high standards of conduct of Commissioners and the community's preparedness to accept decisions if they are made in accordance with the due process of the law.

The Chief Judge examines each complaint in accordance with the Court's policy. If the examination shows no misconduct, the Chief Judge dismisses the complaint and explains in writing to the complainant why the complaint was dismissed.

Table 5.16 shows the criteria used for dismissing complaints in 2016. More than one criterion may be used for each complaint. The table shows that each of the 4 complaints were dismissed.

Table 5.16 Criteria for dismissing complaints

No misconduct was established	4
The complaint related to a judicial or other function that is or was subject to adequate appeal review rights	1

Patterns in complaints

The Court monitors patterns in the nature and scope of complaints to identify areas that might need to be addressed through its continuing professional development programs or other appropriate action. For example, information gathered from complaints in previous years has been used to develop education programmes on improving judgment writing and court craft by Commissioners.

Causes of complaint

Table 5.17 sets out the common causes of complaint and identifies which causes were raised by the complaints made in 2016. The number refers to the number of complaints raising that cause of complaint. Many complaints raise multiple causes and these are captured by this approach. It is to be emphasised these are the categories of allegations made in complaints, whether or not they were upheld.

Table 5.17 Common causes of complaint

	2016
Bias, collusion or conflict of interest	2
Delay	
Dissatisfaction with substantive outcome or wrong decision	3
Dissatisfaction with procedural and evidentiary rulings	1
Error interpreting or applying the law	1
Failure of Court to enforce judgment or orders	1
Failure to give fair hearing	2
Impairment	
Inadequate reasons for judgment	1
Inappropriate behaviour or comments or discourtesy	1
Incompetence	

Substitution for appeals or review

Many of the complaints made amount, in essence, to a complaint that a Commissioner has made the wrong decision. These complaints are often made in apparent substitution of an appeal against the decision of a Commissioner or Registrar. They are usually made when a party to litigation is aggrieved by an unfavourable decision but for one reason or another (including financial reasons) does not wish to appeal. Instead, a personal complaint is made against the decision-maker, either directly challenging the outcome or indirectly doing so by alleging that the outcome could only have resulted by some fault or bias of the decision-maker. Such complaints are dealt with on their merits. However a complaint about a Commissioner is not a substitute for an appeal and the Chief Judge cannot correct allegedly erroneous decisions.

In 2016, three of the complaints were that the Commissioners had made wrong findings on the evidence and made the wrong substantive decision. One complaint was that the Commissioner had made wrong rulings about the procedure and conduct of the hearing and the evidence to be admitted. One complaint was that the Commissioner had wrongly interpreted and applied the law. One complaint was that the Commissioner's reasons for findings of fact and the ultimate decision were inadequate. The existence of the right of appeal under s 56A of the Court Act was a satisfactory means to redress these complaints.

Misunderstanding as to dispute resolution process

The Court resolves matters by a variety of dispute resolution processes, including consensual mechanisms such as conciliation and mediation, and adjudicative mechanisms such as hearings. Self-represented parties and persons other than parties to proceedings, such as local residents, can misunderstand the dispute resolution process being utilised.

In 2016, one complaint concerned a conciliation conference under s 34 of the Court Act held at the site of the proposed development. At the conciliation conference, the presiding commissioner said that if the parties reach agreement as to the terms of a decision in the proceedings that would be acceptable to the parties, he had to accept the agreement and make orders in terms of the agreement. An objector to the proposed development, who was not a party, complained that the Commissioner had predetermined the outcome of the conciliation conference, giving rise to a reasonable apprehension of bias. This complaint revealed a misunderstanding of the difference between conciliation

and adjudication of proceedings and the function and obligations of a Commissioner conducting a conciliation conference.

Two complaints concerned hearings conducted onsite of applications under the *Trees (Disputes Between Neighbours) Act 2006* concerning neighbours' hedges. The complainants were concerned about the procedure adopted for the conduct of the hearing onsite. One complaint expressed concern that witnesses were not sworn before giving evidence and that the hearing was not recorded. Another complaint was that the Commissioner did not give the parties a further opportunity to be heard before she delivered judgment. The hearing had concluded and the Commissioner had reserved her judgment to be delivered at a later date. The complainant thought that the Commissioner should have invited the parties to make further submissions before delivering the reserved judgment.

These complaints revealed a misunderstanding of how hearings are conducted on the site of a dispute and the necessary differences in procedure from a hearing conducted in court.

Inappropriate conduct or discourtesy

One complaint concerned the manner in which the Commissioner conducted a hearing. The hearing was held on the site of a dispute about a neighbour's hedge. The Commissioner was concerned about parties interrupting and talking over one another and over the Commissioner. The Commissioner raised her voice and said that if this behaviour did not change, the hearing would be adjourned from the site to a courtroom. The complainant felt that the Commissioner raised her voice to an unacceptably loud level. The complaint a misunderstanding about the onsite hearing. The onsite

hearing was a hearing of the proceedings, notwithstanding that it was being conducted onsite and not in a courtroom. The Commissioner had a responsibility to control the conduct of the hearing. The open-air venue may have required the Commissioner to elevate her voice in order to be heard over the higher background noise. The warning to adjourn to a courtroom was appropriate in order to maintain control and ensure an orderly and fair hearing.

Bias

Two complaints expressed concern that the Commissioner was biased. One complainant thought that the Commissioner had earlier heard and decided a similar matter and therefore would be biased in determining the current matter. The complainant confused the Commissioner with another Commissioner. Another complainant misunderstood the conciliation process and believed that the Commissioner was biased when the Commissioner said that he was required to make orders in terms of any agreement that the parties might reach. Neither of these complaints revealed any bias of the Commissioner concerned.

Misunderstanding as to enforcement role of the Court

A common misunderstanding is that the Court has a role to investigate and enforce on its own initiative compliance with judgments and orders that the Court has made. The Court has no such role. It is a matter for parties in whose favour judgment and orders are made, or government authorities with enforcement powers, to apply to the Court for orders enforcing any judgment and orders. The Court only then will determine the appropriate enforcement orders.

One complaint alleged that a neighbour had not complied with an order that a Commissioner of the Court had made to cut a neighbour's hedge. This was not a complaint about the Commissioner's conduct in making the order, only the neighbour's conduct in not complying with the order.

6 Education and Community Involvement

- Continuing professional development
 - Continuing professional development policy
 - Annual Court Conference 2016
 - Twilight seminar series
 - National Mediator Accreditation
 - Training and education seminars for Court staff
 - Other educational activities
- Performance indicators and programme evaluation
- Publications
- Education and participation in the community
- Individual Judges' and Commissioners' activities

Continuing professional development

Continuing professional development policy

The Court adopted in October 2008 a Continuing Professional Development Policy for the Court. The purpose of continuing professional development is to enhance professional expertise, facilitate development of professional knowledge and skills, and promote the pursuit of juristic excellence. The policy sets a standard for each Judge and Commissioner of the Court of five days (or 30 hours) each calendar year of professional development activities relating to their professional duties.

To assist in meeting the standard, the Court and the Judicial Commission of New South Wales provide an annual conference of two days (12 hours) and a twilight seminar series providing at least 12 hours (two days) of professional development activities a year.



*Field Trip:
The Australian Botanic
Garden, Mount Annan*

Annual Court Conference 2016

The Annual Court Conference for 2016 was held on Thursday 19 May and Friday 20 May 2016 at Peppers Craigieburn, Bowral.

Six Judges, 7 Commissioners, 6 Acting Commissioners and the Registrar attended

the conference. The conference was organised in partnership with the Judicial Commission of New South Wales. The two day conference program included sessions on:

- The Kilmuir Rules and Masterchef – What is the Connection?
- International Framework on Climate Change
- Climate Change Law and Policy in Practice: From Kyoto to Paris and Australia's Position in the Global Climate Landscape
- Recent Developments in Criminal Law
- Performance Indicators and Mediation and Conciliation Practice
- Unconscious Bias
- Impact of Climate Change on Future Development/ Urban Design
- Public Sydney
- Transport Planning for Sydney – Challenges and Opportunities
- Field Trip: The Australian Botanic Garden, Mount Annan



The Hon. Justice Ward and The Hon. Justice Pepper at the 2016 Land and Environment Court of NSW Annual Conference, Peppers Craigieburn, Bowral

Twilight seminar series

The Court commenced its twilight seminar series in November 2008. The seminars are held after court hours from 4.30pm

to 6.00pm. The Court held six twilight seminars in 2016, and there was also one cross-jurisdictional workshop, two field trips, four Ngara Yura Program seminars and one Ngara Yura Program site visit.

10 February	Field trip to Barangaroo Reserve, presented by Ms Sonya Errington, Director, Governance; Mr Joe Clayton, Community Manager; and Mr Clarence Slockee, Team Leader, Visitor Services, Barangaroo Development Authority
9 March	Twilight seminar, Resolution Processes in NCAT, presented by Her Honour Magistrate Nancy Hennessy, Deputy President and Division Head, Administrative and Equal Opportunity Division, NCAT
13 April	Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales
14 May	Ngara Yura Program site visit to Kamay Botany Bay National Park
25 May	Ngara Yura Program seminar, Who Speaks for Country in NSW? Presented by Acting Commissioner Norman Laing
2 June	Lunch seminar, Sentencing in the Land and Environment Court, presented by Mr Hugh Donnelly, Director, Research and Sentencing and Mr Michael Cain, Consultant, Judicial Commission of NSW
3 August	Twilight seminar, Appeals from the Land and Environment Court, presented by the Honourable Justice Mark Leeming, NSW Court of Appeal
4 August	Ngara Yura Program seminar, Understanding Intergenerational Trauma, presented by Mr Brian Dowd, Trauma Therapist, The People Mechanic, Dr Robyn Shields AM, Deputy Commissioner, NSW Mental Health Commission and Her Honour Magistrate Susan Duncombe, Local Court of NSW
27 September	Twilight seminar, Coastal Management in NSW, presented by Emeritus Professor Bruce Thom, Faculty of Science, University of Sydney
6 October	Ngara Yura Program seminar, Aboriginal Trauma, Foetal Alcohol Spectrum Disorder and the Juvenile Justice System: a Volatile Cocktail, presented by Ms June Oscar AO and Her Honour Judge Dina Yehia SC, District Court of NSW
11 October	Judicial Commission of NSW Field trip to the Old Clare Hotel, presented by Mr Tim Greer, Director, Tonkin Zulaikha Greer Architects
19 October	Ngara Yura Program seminar, Clean Slate Without Prejudice, presented by Superintendent Luke Freudenstein, Commander, Redfern Local Area Command and Mr Shane Phillips, CEO, Tribal Warrior Association Mentoring Program

2 November	Twilight seminar, Sentencing in the Land and Environment Court 2000–2015, presented by Mr Hugh Donnelly, Director, Research and Sentencing, Judicial Commission of NSW
1-2 December	Cross-Jurisdictional Judgment Writing Workshop, presented by Professor James Raymond, Amora Hotel Jamison, Sydney



Ngara Yura Program Site Visit: Kamay Botany Bay National Park , 14 May 2016

National Mediator Accreditation

In 2016, 7 Commissioners, the Registrar and Assistant Registrar were nationally accredited as mediators. A newly appointed Commissioner received her mediation training in 2016 and completed accreditation in 2017.

Other educational activities

The Judges and Commissioners of the Court updated and developed their skills and knowledge by attending conferences, seminars and workshops. Some of these programmes are tailored specifically to the Court's needs, while others target the national or international legal and judicial communities. Specific information for each Judge or Commissioner is provided below.

Performance indicators and programme evaluation

All educational activities conducted by the Court and Judicial Commission of New South Wales are evaluated both quantitatively and qualitatively to ensure they meet the needs of the Judges, Commissioners and Registrars of the Court.

Quantitatively, the Court's Continuing Professional Development policy sets a standard of five days (or 30 hours) in each calendar year of professional development activities for each Judge and full-time Commissioner. Collectively, the quantitative target is 450 hours. In 2016, both the

collective target as well as the individual standard for each Judge and full time Commissioner was met or exceeded.

Qualitatively, an evaluation form is distributed to each participant of each educational programme to receive feedback on whether the educational objectives were met and to measure the programme's usefulness, content and delivery. The ratings derived from the evaluation forms assist in measuring the success of the education programmes. Figure 6.1 shows the overall satisfaction with the Court's annual conference over the past five years with all but one exceeding the target of 85%.

Table 6.1 Participant evaluation of Land and Environment Court Annual Conferences 2012 to 2016

	Target	2012	2013	2014	2015	2016
Overall satisfactory rating	85%	80%	90%	89%	93%	100%

The Court's twilight seminar series commenced in 2008 but had its first full year of operation in 2009. Figure 6.2 shows the

overall satisfaction of the twilight seminar series in the years 2012 to 2016, all of which exceeded the 85% standard.

Table 6.2 Participant evaluation of Land and Environment Court Twilight seminar series 2012 to 2016

	Target	2012	2013	2014	2015	2016
Overall satisfactory rating	85%	93%	88%	86%	91%	92%

*Note: 2012 was based on 4 seminars, 2 cross-jurisdictional seminars and 2 field trips and one skills workshop on Communication in the courtroom; 2013 was based on 6 seminars, 1 cross-jurisdictional seminar and 1 field trip; 2014 was based on 4 seminars, 2 cross-jurisdictional seminars, 1 field trip and 1 site visit; 2015 was based on 3 seminars and 2 field trips; and 2016 was based on 6 seminars and 2 field trips.

The Education Director of the Judicial Commission provides an evaluation report on each educational programme to the Court's Education Committee about the usefulness and relevance of the programme, noting any recommendations for improvements to future programmes based on input from participants and presenters.



2016 Annual Conference: Peppers Craigieburn, Bowral

Publications

As part of its education programme, the Court produced two publications.

In August 2010, the Court, in conjunction with the Judicial Commission of New South Wales, produced the *Land and Environment Court of NSW Commissioners' Handbook*. The Handbook provides guidance, especially to Commissioners and Registrars, on the Court and its jurisdiction; the members of the Court and their functions; court practice and procedure; the commencement of proceedings and pleadings; case management; the different processes for resolution of proceedings, including hearings and conciliation conferences; decision-making and judgments; conduct of court members; and resources and remuneration for Commissioners. The Handbook is

published online by the Judicial Commission on a closed website for members of the Court.

Beginning in January 2010, the Court publishes quarterly on the Court's website a Judicial Newsletter for the benefit of members of the Court and the wider public to better enable them to keep up to date with recent legal developments. The Newsletter provides summaries of recent legislation and judicial decisions of the High Court of Australia, NSW Court of Appeal, NSW Court of Criminal Appeal, NSW Supreme Court and Land and Environment Court, as well as of other courts in Australia and overseas, concerning matters of relevance to the Court's jurisdiction. In the electronic version of the Newsletter published on the Court's website under the tab 'Publications & Resources' then Judicial Newsletters, links are included in the text to enable direct access to the legislation, documents and decisions referred to in the text.

Education and participation in the community

The Court has a high national and international reputation as a leading specialist environment court. There is significant demand for the exchange of knowledge and experience within the national and international legal and judicial communities. Judges and Commissioners of the Court have actively participated in capacity building and information exchange by presenting papers and participating as trainers in a variety of conferences, seminars, workshops, giving lectures at educational institutions and presiding at moot courts.

The Court has also regularly hosted international and national delegations to the Court.

Individual Judges' and Commissioners' activities

The Judges' and Commissioners' activities during 2016 are summarised below:

The Hon. Justice Brian John Preston SC, Chief Judge

Conferences and seminars

4 February	Address at the opening of Law Term 2016 Dinner, Law Society of NSW, by the Hon. T. F. Bathurst AC, Chief Justice of the Supreme Court of NSW, Art Gallery of NSW, Sydney
8 February	50th anniversary sitting of the Court of Appeal of NSW, Banco Court, Sydney
23 February	Australian National University and Canberra Times meet the author event with Stan Grant, <i>Talking to My Country</i> , Australian National University, Canberra
9 March	Twilight seminar, Resolution Practices in NCAT, presented by Her Honour Magistrate Nancy Hennessy, NCAT, Judicial Commission of NSW, Sydney
10 March	Mahla Pearlman Oration 2016 and Young Environmental Lawyer of the Year Award, Addressing Climate Injustice: Human Rights and Climate Change in the Courts, presented by Professor Jacqueline Peel, University of Melbourne, Federal Court of Australia, Sydney
13 April	Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney
15 April	UNEP Judicial Workshop, Environmental Rights, University of Pretoria, Pretoria, South Africa
27-29 April	1st World Environmental Law Congress, Environmental Rule of Law, Justice and Planetary Sustainability, Supreme Court of the State of Rio de Janeiro, Rio de Janeiro, Brazil
30 April	1st meeting of the Global Judicial Institute for the Environment, Supreme Court of the State of Rio de Janeiro, Rio de Janeiro, Brazil
19-20 May	Land and Environment Court of NSW Annual Conference 2016, Peppers Craigiburn, Bowral
1 June	2016 Australian of the Year Awards talk, Inspiring change in human rights, with speakers David Morrison AO, Elizabeth Broderick AO, Julian McMahon and Nic Marchesi, introduced by Gillian Triggs and hosted by Julia Baird, Town Hall, Sydney
2 June	Lunch seminar, Sentencing in the Court, presented by Hugh Donnelly and Michael Cain, Judicial Commission of NSW, Land and Environment Court, Sydney

29 September	Macquarie University Centre for Environmental Law Annual Lecture 2016, Cities and Sustainability: Operationalising Sustainability Principles In Metropolitan Planning Governance, delivered by the Hon. Rob Stokes MP, Macquarie University, Sydney
30 September	Lecture, Commissioner for Indonesia's Anti-Corruption Commission on Fighting Corruption in Indonesia's Natural Resource Sector, presented by Dr Laode M Syarif, Sydney Law School, Sydney
26 October	Book launch of ' <i>Songs of a War Boy</i> ', by Deng Thiak Adut, Kinokuniya Bookshop, Sydney
12-13 October	Australasian Conference of Planning and Environment Courts and Tribunals 2016, Adelaide
2 November	Twilight seminar, Sentencing in the Land and Environment Court 2000 - 2015, presented by Mr Hugh Donnelly, Director of Research and Sentencing, and Mr Michael Cain, Senior Research Officer, Judicial Commission of NSW, Sydney

Speaking Engagements

3 March	<i>The Judicial Development of Ecologically Sustainable Development</i> , a paper presented at the Rule of Law for Supporting the 2030 Development Agenda/Sustainable Development Goals Conference, New Delhi, India
29 March	Lecture to Environmental Law students from Macquarie Law School, Macquarie University on the case <i>Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd</i> (2007) 161 LGERA 1 and discussion on other wind farm cases, Land and Environment Court of NSW, Sydney
23 April	Heritage Law Lecture delivered to Environmental Law students from Macquarie Law School, Macquarie University, Sydney
15 May	<i>Mapping litigation to enforce climate change obligations of states and enterprises</i> , a presentation delivered at Global Climate Change: Justice, Principles and Human Well-being Seminar, Shanghai University of Finance and Economics, Shanghai, China
26 May	<i>The Adequacy of the Law in Satisfying Society's Expectations for Major Projects</i> , a presentation delivered at Rising up: the role of citizen activism in creating a sustainable society, Sustainability Dialogue hosted by Macquarie University and Kuringgai Council, Zenith Theatre, Chatswood
26 May	<i>Tips for good environmental assessment of projects</i> , a presentation delivered to the Planning Services Division of the NSW Department of Planning and Environment, Royal Automobile Club, Sydney
27 May	<i>An Introduction to Court Room Evidence</i> , a presentation to the Clayton Utz Expert Witness Seminar, Clayton Utz, Sydney

13 June	<i>Climate Change and Air Pollution Litigation In the Asia-Pacific Region</i> , a presentation delivered to the International Seminar on the Judicial Response to Climate Change, Supreme People's Court, Beijing, China
14 June	<i>Economic Valuation of the Environment</i> , National Environmental Judges Training, National Judges College, Beijing, China
22 June	<i>The Judicial Development of Ecologically Sustainable Development</i> , a presentation delivered at the 14th IUCN Academy of Environmental Law Colloquium, University of Oslo, Oslo, Norway
6 July	Presentation to the Urban Taskforce Australia Boardroom Luncheon, Governor Phillip Tower, Sydney
14 August	<i>Chair</i> , Environmental Law session, Clearing the Air: Does Asia Care?, 29th Annual LAWASIA Conference, Colombo, Sri Lanka
23 August	<i>Operation of the Land and Environment Court</i> , a presentation to Macquarie University Environmental Law Clinic students, Land and Environment Court of NSW, Sydney
20 September	<i>IBA Model Statute of Climate Change Claims and Remedies</i> , a presentation delivered at the International Bar Association Annual Conference, Washington DC, USA
27 September	<i>Mapping climate change adjudication</i> , a presentation delivered at the Third Asian Judges Symposium on Law, Policy and Climate Change Asian Development Bank, Manila, Philippines
8 October	<i>Climate change litigation</i> , a lecture delivered to International Climate Law Students, Western Sydney University, Parramatta
12 October	<i>Adapting to a Sustainable Energy Future: The Role of Planning and Environmental Law</i> , a paper presented to the ACPECT Conference, Adelaide Convention Centre, Adelaide
21 October	<i>The Judicial Development of Ecologically Sustainable Development</i> , a paper presented to 'The future of Australian environmental law: Politics, reform and community activism' AELA Conference 2016, Griffith University, Brisbane
2 November	Welcome address to the newly appointed Silks, Silks Bows Ceremony, Land and Environment Court of NSW, Sydney
6 November	Panel member, Open Forum: Community Awareness of the Judiciary Program, Judicial Commission of NSW, Sydney
9 November	<i>The Role of Courts in Climate Change Litigation</i> , a presentation delivered to the 'Attaining the Sustainable Development Goals – Environmental Law, Policy and Management' Conference, National University of Singapore, Singapore

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- 22 November *Rethinking Climate Change and the Law*, keynote address delivered at the launch of (2016) 39(4) UNSW Law Journal Thematic Issue 'Rethinking Climate Change and the Law', King & Wood Mallesons, Sydney
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- 23 November *Tips for good environmental assessment of projects*, a presentation delivered to the NSW Planning and Assessment Commission, Sydney
-

Publications

- B J Preston, "The Adequacy of the Law in Achieving Climate Change Justice – Some Preliminary Comments" (2016) 34(1) *Journal of Energy & Natural Resources Law* 45
-
- B J Preston, "Biodiversity Offsets: Adequacy and Efficacy in Theory and Practice" (2016) 33(2) *Environmental and Planning Law Journal* 93
-
- B J Preston, "The Contribution of Courts in Tackling Climate Change" (2016) 28 *Journal of Environmental Law* 11
-
- B J Preston, "The role of the courts in facilitating climate change adaptation" (2016) *APCEL Climate Change Adaptation Platform*
-
- B J Preston, "Foreword" to the Thematic Issue: Rethinking Climate Change and the Law (2016) 39(4) *UNSW Law Journal* 1480
-
- B J Preston, "Specialised Court Procedures for Expert Evidence" (2016) *The Hanreijiho No* 2309, 40 (in Japanese)
-
- B J Preston, "The judicial development of ecologically sustainable development" in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law*, Edward Elgar, 2016, 475.
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Membership of legal, cultural or benevolent organisations

- Chair, Land and Environment Court Rules Committee
-
- Member, Uniform Rules Committee, Supreme Court of NSW
-
- Official member, Judicial Commission of New South Wales
-
- Member, Adhoc Advisory Committee of Judges, United Nations Environment Programme (UNEP) Judges Programme
-
- Chair, Environmental Law Standing Committee, Law Association for Asia and the Pacific (LAWASIA)
-
- Member, Environmental Law Commission, The International Union for Conservation of Nature (IUCN)
-
- Member, International Bar Association President's Climate Change Justice and Human Rights Task Force
-
- Fellow, Australian Academy of Law (FAAL)
-
- Honorary Fellow, Environment Institute of Australia and New Zealand
-
- Member, Advisory Board, Asia Pacific Centre for Environmental Law, National University of Singapore
-

Title Editor, Title 14 – Environment and Natural Resources, The Laws of Australia

General Editor, Local Government Planning and Environment NSW Service

Member, Editorial Advisory Board, Asia Pacific Journal of Environmental Law

Adjunct Professor, Sydney Law School, University of Sydney

Guest lecturer, ANU College of Law, Australian National University

Member, Advisory Board, Centre for Environmental Law, Macquarie University

Delegations and international assistance

24 May Lecture on cases before the Land and Environment Court of NSW delivered to a delegation of 25 students from Kelley School of Business, Indiana University, Land and Environment Court of NSW, Sydney

19 July Presentation on the Land and Environment Court of NSW, lessons learned, procedures and developments, delivered to delegation from China Council for International Cooperation on Environment and Development, Land and Environment Court of NSW, Sydney

27 October Meeting with Ms Eva Klambauer, PhD Student at King's College London, to discuss her research on the impact of laws regulating sex work on the health, safety and well-being of sex workers for a comparative study of England and New South Wales' regulation of brothels and to discuss brothel cases in the Land and Environment Court of NSW, Land and Environment Court of NSW, Sydney

The Hon. Justice Terence William Sheahan AO

Conferences and seminars

3 February Transparency International Australia, Australian Launch of the 2015 Corruption Perceptions Index, presented by KordaMentha, Sydney

10 February Judicial Commission of NSW field trip to Barangaroo Reserve, led by Ms Sonya Errington, Director, Governance, and Mr Clarence Slockee, Team Leader, Visitor Services, Barangaroo Development Authority, Sydney

16 February The 2016 Frank Walker Memorial Lecture, Over representation of Aboriginal people in prison: The need for some genuine decision-making, presented by the Hon. Bob Debus AM, NSW Labor Lawyers, University of Technology, Ultimo

17 February Anglo-Australasian Lawyers Society (AALS) breakfast seminar, An Australian Republic: Bridging the gap between what is wise and desired, presented by Professor Anne Twomey, Professor of Constitutional Law, University of Sydney, The Australian Club, Sydney

2 March	Australian Institute of Administrative Law (AIAL) Seminar, 'Judicial Review in State Jurisdiction', presented by the Hon. Justice John Basten, Ashurst Sydney
4 March	Whitlam Institute Seminar, 'The Dismissal: In the Queen's name', presented by Eric Sidoti, Director, Whitlam Institute, Paul Kelly, journalist and author, Troy Bramston, journalist and author, Whitlam Institute, Rydalmere
7 March	The Sydney Institute Seminar, 'Battles and Ethics in the Culture Wars', presented by Dr Margaret Somerville, McGill Centre for Medicine, Ethics and Law, Quebec, The Sydney Institute, Sydney
9 March	Twilight seminar, 'Resolution Processes in NCAT', presented by Her Honour Magistrate Nancy Hennessy, Deputy President and Division Head, Administrative and Equal Opportunity Division, NCAT, Judicial Commission of NSW, Sydney
10 March	Mahla Pearlman Oration 2016, 'Addressing Climate Injustice: Human Rights and Climate Change in the Courts', presented by Professor Jacqueline Peel, School of Law, University of Melbourne, Federal Court of Australia, Sydney
13 April	Twilight seminar, 'Administrative Law', presented by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney
27 April	Council of Australasian Tribunals NSW (COAT NSW), Annual General Meeting, address presented by the Hon. Justice Stephen Campbell, Supreme Court of NSW, COAT NSW, Darlinghurst
4 May	AIAL seminar, 'Whose apprehension of bias?', presented by the Hon. Justice Debbie Mortimer, Federal Court of Australia, Clayton Utz, Sydney
10 May	AALS breakfast seminar, 'The case for an Australian Republic', presented by Peter Fitzsimons AM, journalist, author, Chair Australian Republican Movement, The Australian Club, Sydney
19 - 20 May	Land and Environment Court of NSW 2016 Annual Conference, Peppers Craigieburn, Bowral
25 May	Twilight seminar, 'Who speaks for Country', presented by Norman Laing, Acting Commissioner of the Land and Environment Court of NSW and Kellyanne Stanford, Waratah Partners, Judicial Commission of NSW, Sydney
2 June	Lunch seminar, 'Sentencing in the Court', presented by Hugh Donnelly and Michael Cain, Judicial Commission of NSW, Land and Environment Court, Sydney
30 June	AALS breakfast seminar, 'A Life in the Law - reflections from 'On the Edges of History: A Memoir of Law, Books and Politics'', presented by Michael Sexton SC, NSW Solicitor General, author, The Australian Club, Sydney
12 July	Carroll & O'Dea lunchtime seminar, 'Ethics for Solicitors under the Legal Profession Uniform Law', presented by John McKenzie, Legal Services Commissioner, Carroll & O'Dea, Sydney

13 July	The Sydney Institute seminar, Tom Hughes QC - Many Sides to a Character, presented by Ian Hancock, Author, Corrs Chambers Westgarth, Sydney
21 July	AALS breakfast seminar, The Republican Revival, presented by David Flint AM, Emeritus Professor of Law, National Convener of Australians for Constitutional Monarchy, The Australian Club, Sydney
27 July	The Sydney Institute seminar, Justice Must Serve, presented by Gabrielle Upton, NSW Attorney General, Corrs Chambers Westgarth, Sydney
3 August	Twilight seminar, Appeals from the Land and Environment Court, presented by the Hon. Justice Mark Leeming, NSW Court of Appeal, Judicial Commission of NSW, Sydney
4 August	Twilight seminar, Understanding Intergenerational Trauma, presented by an expert panel convened by the Hon. Justice Stephen Rothman AM, Supreme Court of NSW, NSW Bar Association, Sydney
12 August	AALS breakfast seminar, Australia's Origins in the South Pacific and its future in East Asia, presented by the Hon. Justice Michael Pembroke, The Australian Club, Sydney
8 September	AALS breakfast seminar, Judgment of Gageler J in <i>Plaintiff M68-2015 v Minister for Immigration and Border Protection</i> [2016] HCA 1, presented by Emeritus Professor Gillian Triggs, President, Australian Human Rights Commission, The Australian Club, Sydney
27 September	Twilight seminar, Coastal Management in NSW, presented by Emeritus Professor Bruce Thom, University of Sydney, President, Australian Coastal Society, Judicial Commission of NSW, Sydney
6 October	NSW Judicial Commission Ngara Yura Committee, the NSW Bar Association Indigenous Barristers' Strategy Working Party and the Law Society of NSW Indigenous Issues Committee Joint Seminar series, 'Aboriginal trauma, Foetal Alcohol Spectrum Disorder and the juvenile justice system', presented by June Oscar AO, 2016 Desmond Tutu Fellow, and the Hon. Judge Dina Yehia SC, District Court of NSW, NSW Bar Association, Sydney
11 October	Judicial Commission of NSW field trip to the Old Clare Hotel, presented by Mr Tim Greer, Director, Tonkin Zulaikha Greer Architects, Chippendale
12 October	The Whitmore lecture, Judicial Review & the Shifting Sands of Legal Unreasonableness, presented by the Hon. Justice Margaret Beazley AO, President of the Court of Appeal, Federal Court of Australia, Law Courts Building, Sydney
13 October	Tristan Jepson Memorial Foundation Lecture, Leadership and cultural change in the legal profession, presented by Lt Gen David Morrison AO (Retd), Federal Court of Australia, Law Courts Building, Sydney
18 October	Australian Academy of Law seminar, The Increasing Internationalisation of Australian Law, presented by Justin Gleeson SC, Solicitor-General of the Commonwealth of Australia, Banco Court, Law Courts Building, Sydney

19 October	Ngara Yura Program seminar, Clean Slate without Prejudice, presented by Superintendent Luke Freudenstein, Commander, Redfern Local Area Command and Mr Shane Phillips, CEO, Tribal Warrior Association Mentoring Program, Judicial Commission of NSW, Sydney
24 October	Australian Association of Constitutional Law seminar, Celebrating 100 Years of the Commonwealth Solicitor-General, presented by Sir Anthony Mason AC KBE QC, and a panel of other former Solicitors General, Banco Court, Law Courts Building, Sydney
26 October	AALS breakfast seminar, The ICAC, the Parliament and the Courts, presented by Ian Temby QC, The Australian Club, Sydney
2 November	Twilight seminar, Sentencing in the Land and Environment Court 2000 - 2015, presented by Mr Hugh Donnelly and Mr Michael Cain, Judicial Commission of NSW, Sydney
22 November	The Spigelman Public Law Oration, Judicial legitimacy and the limits of review, presented by the Hon. Justice Virginia Bell AC, High Court of Australia, Banco Court, Law Courts Building, Sydney

Speaking engagements

26 September	<i>The L & E Court's Role in the State's Planning, and Development Systems</i> , a presentation to Planning Law Students, University of Technology, Sydney
26 November	Keynote Address, NSW Justices' Annual General Meeting of the NSW Justices Association, Burwood

Membership of legal, cultural or benevolent organisations

Member, Land and Environment Court's Rules Committee

Member, Land and Environment Court's Nominee, Governing Council of the Judicial Conference of Australia

Member, Committee of Management, Anglo-Australian Lawyers Society

The Hon. Justice Nicola Hope Margaret Pain

Conferences and seminars

10 February	Judicial Commission of NSW field trip to Barangaroo Reserve, led by Ms Sonya Errington, Director, Governance, and Mr Clarence Slockee, Team Leader, Visitor Services, Barangaroo Development Authority, Sydney
2 March	AIAL seminar, Judicial Review in the Supreme Court, presented by the Hon. Justice Basten, Sydney
9 March	Twilight seminar, Resolution Processes in NCAT, presented by Her Honour Magistrate Nancy Hennessy, Deputy President NCAT, Judicial Commission of NSW, Sydney

10 March	Mahla Pearlman Oration 2016, Addressing Climate Injustice: Human Rights and Climate Change in the Court, presented by Professor Jacqueline Peel, University of Melbourne, Federal Court, Sydney
13 April	Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney
27-29 April	2016 World Environmental Law Congress, Environmental Rule of Law, Justice and Planetary Sustainability, Brazil, International Union for Conservation of Nature (IUCN) and United Nations Environment Programme (UNEP), Rio de Janeiro, Brazil
3 August	Twilight seminar, Appeals from the Land and Environment Court, the Hon. Justice Mark Leeming, NSW Court of Appeal, Judicial Commission of NSW, Sydney
4 August	Ngara Yura Program seminar, Understanding Intergenerational Trauma, presented by Mr Brian Dowd, Trauma Therapist, The People Mechanic, Dr Robyn Shields AM, Deputy Commissioner, NSW Mental Health Commission and Her Honour Magistrate Sue Duncombe, Local Court of NSW, NSW Bar Association, Sydney
25 August	Distinguished Speaker Program, East West Street: A Personal History of the Origins of Genocide and Crimes Against Humanity, presented by Professor Philippe Sands QC University College London and Matrix Chambers, Sydney University Law School, Sydney
11 October	Judicial Commission field trip to The Old Clare Hotel, Kensington Street, Chippendale
19 October	Ngara Yura Program seminar, Clean Slate without Prejudice, presented by Superintendent Luke Freudenstein, Commander, Redfern Local Area Command and Mr Shane Phillips, CEO, Tribal Warrior Association Mentoring Program, Judicial Commission of NSW, Sydney
2 November	Twilight seminar, Sentencing in the Land and Environment Court 2000 – 2015, presented by Mr Hugh Donnelly, Director, Research and Sentencing, and Mr Michael Cain, Senior Research Officer, Judicial Commission of NSW, Sydney

Speaking engagements

24 May	<i>Sentencing in Environmental Crime in New South Wales</i> , University of Wollongong Faculty of Law, Wollongong
2 June	Judging Panel Law Student Paper and Presentation Competition, Centre for Environmental Law, Macquarie University, Sydney
22 June	<i>Restorative Justice for Environmental Crime: An Antipodean Experience</i> with the Hon. Justice Rachel Pepper, 14th Annual Colloquium of the IUCN Academy of Environmental Law: The Environment in Court, Oslo, Norway

22 September	<i>Environmental Offences in the Land and Environment Court of New South Wales</i> , Visiting Delegation Shandong Province, Land and Environment Court of NSW, Sydney
10 October	Judge mock trial Environmental Law Students Association, Macquarie University, Land and Environment Court of NSW, Sydney
10 November	<i>The Model of a Specialist Environmental Court: The Land and Environment Court of New South Wales</i> , Second International Forum on Environmental Justice, Santiago, Chile
18 November	<i>Restorative Justice in Environmental Crime: Prospects and Potential</i> , National Environmental Law Association Conference 2016 –Environmental Law: What could we do better?, Melbourne

Membership of legal, cultural or benevolent organisations

Chair, Australian Centre for Climate and Environmental Law Advisory Board, University of Sydney

Member, International Union for Conservation of Nature, Commission on Environmental Law

Chair, Land and Environment Court of New South Wales Education Committee

Member, Judicial Commission of New South Wales Standing Advisory Committee on Judicial Education

The Hon. Justice Rachel Ann Pepper

Conferences and seminars

12 February	Gilbert + Tobin 2015 Constitutional Law Conference, Sydney
9 March	Twilight seminar, Resolution Processes in NCAT, Magistrate Nancy Hennessy, Deputy President and Division Head, Administrative and Equal Opportunity Division, NCAT, Judicial Commission of NSW, Sydney
13 April	Twilight seminar, Administrative Law, Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney
27 April	AIAL seminar, Reasonable Apprehension of Bias, Justice Mortimer, Ashurst, Sydney
14 May	Ngara Yura Program site visit, Kamay Botany Bay National Park, Kurnell
19-20 May	2016 Land and Environment Court Conference, Bowral, New South Wales
25-27 May	IAWJ Biennial Conference 2016, Washington, USA
21-24 June	IUCN Academy of Environmental Law, Colloquium, Oslo, Norway
3 August	Twilight seminar, Appeals from the Land and Environment Court, Justice Leeming, NSW Court of Appeal, Judicial Commission of NSW, Sydney

4 August	NSW Judicial Commission Ngara Yura Committee, Bar Association Indigenous Barristers' Strategy Working Party and the Law Society of NSW Indigenous Issues Committee, Understanding Intergenerational Trauma, Mr Brian Dowd, Trauma Therapist, The People Mechanic, Dr Robyn Shields AM, Deputy Commissioner, NSW Mental Health Commission and Magistrate Sue Duncombe, Local Court of NSW, NSW Bar Association, Sydney
27 September	Twilight seminar, Coastal Management in New South Wales, Emeritus Professor Bruce Thom, Judicial Commission of NSW, Sydney
11 October	The Increasing Internationalisation of Australian Law, Justin Gleeson SG SC, Fifth Annual Patron's Address, Australian Academy of Law, Supreme Court of New South Wales, Banco Court, Sydney
28 October	Public Law Weekend, National Museum of Australia, Canberra
2 November	Twilight seminar, Sentencing in the Land and Environment Court, Mr Hugh Donnelly, Director, Research and Sentencing and Michael Cain, Consultant, Judicial Commission of NSW, Land and Environment Court of NSW, Sydney
12-13 November	Sixth ASEAN Chief Justices' Roundtable on Environment, Manila, Philippines
17 November	Shaping the Next Generation of Australian Climate Litigation, Workshop hosted by CREEL, Melbourne Law School, University of Melbourne, Melbourne
18 November	Environmental Law – What can we do better?, NELA Conference 2016, Melbourne

Speaking engagements

2 March	Chair, AIAL seminar, <i>Judicial Review in the Supreme Court</i> , Ashurst, Sydney
5 March	Criminal Law Seminar, <i>How to Lead a Successful Life of Crime in the Land and Environment Court of New South Wales: an (Updated) Guide to Criminal Prosecutions in the Court</i> , presented at the Toongabbie Legal Centre, Toongabbie
10 March	Chair, 2016 Mahla Pearlman Oration, Federal Court of Australia, Sydney
23 March	Opening Remarks, <i>Planning Law Update</i> , UNSW CLE Seminar, Sydney
22 June	<i>Are Courts Colour Blind to Country</i> , paper presented with Lauren Butterly at the IUCN Academy of Environmental Law, Colloquium, Oslo, Norway
23 June	<i>Restorative Justice For Environmental Crime: an Antipodean Experience</i> , paper presented with the Hon Justice Nicola Pain at the IUCN Academy of Environmental Law, Colloquium, Oslo, Norway
4-7 October	Lecturer, <i>Environmental Litigation</i> , Faculty of Law, University of Sydney
21 October	Talk to female law students, NSW Bar Association, Sydney

24 October	Closing Remarks, <i>Celebrating 100 years of the Commonwealth Solicitor-General</i> , Gilbert + Tobin Centre of Public Law and AACL, Sydney.
12 November	<i>The Role of Judicial Networking and Information Sharing in Promoting and Implementing Environmental Law</i> , paper presented at the Sixth ASEAN Chief Justices' Roundtable on Environment, Manila, Philippines
13 November	<i>Climate Change Litigation: A Comparison Between Current Australian and International Jurisprudence</i> , paper presented at the Sixth ASEAN Chief Justices' Roundtable on Environment, Manila, Philippines

Publications

Co-Consulting Editor, *Australian Environmental Review*, LexisNexis

Environmental Section Editor, *The Australian Law Journal*, Thompson/Reuters

Justice Nicola Pain, Justice Rachel Pepper, Millicent McCreath and John Zorzetto, "Restorative justice for environmental crime: an antipodean experience" (2016) 31(8) *Australian Environmental Review* 286

Justice Rachel Pepper, "'Hot-Tubbing' – the Use of Concurrent Expert Evidence in the Land and Environment Court of New South Wales and Beyond" (2016) 171 *Australian Construction Law Newsletter* 10

Membership of legal, cultural or benevolent organisations

Lecturer, Faculty of Law, University of Sydney

Secretary, Australian Association of Constitutional Law

Committee member, Australian Institute of Administrative Law (NSW Chapter)

Member, Ngara Yura Committee, Judicial Commission of New South Wales

Member, World Commission on Environmental Law

Member, IUCN Commission on Environmental Law

Member, National Judicial College of Australia

Member, Australian Institute of Judicial Administration

Member, International Association of Women Judges

Member, International Bar Association

The Hon. Justice Malcolm Graeme Craig

Conferences and seminars

9 March Twilight seminar, Resolution Processes in NCAT, presented by Her Honour Magistrate Nancy Hennessy, Deputy President and Division Head, Administrative and Equal Opportunity Division, NCAT, Judicial Commission of NSW, Sydney

13 April	Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of NSW, Judicial Commission of NSW, Sydney
19-20 May	Land and Environment Court of NSW Annual Conference 2016, Peppers Craigieburn, Bowral
25 May	Ngara Yura Program twilight seminar, Who speaks for country in NSW?, presented by Acting Commissioner Norman Laing, Land and Environment Court of NSW, Judicial Commission of NSW, Sydney
2 June	Twilight seminar, Sentencing in the Land and Environment Court, presented by Mr Hugh Donnelly, Director, Research and Sentencing and Michael Cain, Consultant, Judicial Commission of NSW, Land and Environment Court of NSW, Sydney

Membership of legal, cultural or benevolent organisations

Member, The Australasian Institute of Judicial Administration

Member, Judicial Conference of Australia

Member, New South Wales Bar Association

Member, Caselaw Governance Committee

Member, Land and Environment Court of NSW Education Committee

The Hon. Justice Timothy John Moore

Conferences and seminars

23 March	Seminar, Contaminated lands, presented by David Gregory, Environment and Planning Law Association, Sydney
13 April	Twilight seminar, Administrative Law, presentation by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney
19-20 May	Land and Environment Court Annual Conference 2016, Peppers Craigieburn, Bowral
25 May	Twilight seminar, Who Speaks for Country?, presentation by Mr Norman Laing, Acting Commissioner, Land and Environment Court of NSW, Judicial Commission of NSW, Sydney
3 August	Twilight seminar, Appeals from the Land and Environment Court of New South Wales, presentation by the Hon. Justice Mark Leeming, Court of Appeal, Judicial Commission of NSW, Sydney

4 August	Ngara Yura Program seminar, Understanding Intergenerational Trauma, presented by Mr Brian Dowd, Trauma Therapist, The People Mechanic, Dr Robyn Shields AM, Deputy Commissioner, NSW Mental Health Commission and Her Honour Magistrate Sue Duncombe, Local Court of NSW, NSW Bar Association, Sydney
27 September	Twilight seminar, Coastal Management in New South Wales, presentation by Professor Bruce Thom, Faculty of Science, University of Sydney, Judicial Commission of NSW, Sydney
6 October	Ngara Yura Program, Aboriginal trauma, foetal alcohol spectrum disorder and the juvenile justice system, presentation by Ms June Oscar AO and Her Honour Judge Dina Yehia SC, NSW Bar Association, Judicial Commission of NSW, Sydney Ngara Yura Program, An overview of the proposed District Koori Court In New South Wales, presentation by Judge Dina Yehia SC Judicial Commission of NSW, Sydney
12-13 October	Australasian Conference of Planning and Environment Courts and Tribunals 2016, Adelaide
2 November	Twilight seminar, Sentencing in the Land and Environment Court 2000-2015, presented by Mr Hugh Donnelly and Mr Michael Cain, Judicial Commission of NSW, Sydney

Speaking engagements

29 February	<i>Induction</i> , Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
5 March	Opening address, One-Day Environment and Planning Seminar, NSW Young Lawyers Environment and Planning Committee, Sydney
23 June	Book launch, <i>The Challenge of the Commons: A Climate System Initiative</i> , Peter King, Berkelouw Books, Sydney
2 August	<i>Induction</i> , Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
16 August	<i>Applying the Sustainability Lens to Civil Litigation</i> , Chair, launch of the AusLSA Sustainability Project, Australian Legal Sector Alliance, The Justice and Police Museum, Sydney
22 August	<i>Self-Represented Litigants</i> , Land and Environment Court Clinic, Land and Environment Court of NSW, Sydney
12 October	<i>Tackling the profits of unlawful developments - can we learn from the British experience</i> , Australasian Conference of Planning and Environment Courts and Tribunals, Adelaide

Publications

Judicial Newsletter, editor, Land and Environment Court of NSW (from Vol 8, Issue 2)

Membership of legal, cultural or benevolent organisations

Member, Land and Environment Court Library Committee

Member, Land and Environment Court Education Committee

Member, Caselaw Governance Committee

Member, John Koowarta Reconciliation Law Scholarship Advisory Committee

Member, Australian Legal Sector Alliance - Sustainable Legal Sector Working Group

Delegations and international assistance

13 December Meeting with Japanese delegation headed by Mr Kazuto Ohara, Director, Litigation Policy Support Division, Litigation Bureau, Ministry of Justice, Japan

The Hon. Justice John Ernest Robson

Conferences and seminars

3 August Twilight seminar, Appeals from the Land and Environment Court, presented by the Hon. Justice Mark Leeming, Supreme Court Judge and Judge of Appeal, Judicial Commission of NSW, Sydney

4 August Ngara Yura Program seminar, Understanding Intergenerational Trauma, presented by Mr Brian Dowd, Trauma Therapist, The People Mechanic, Dr Robyn Shields AM, Deputy Commissioner, NSW Mental Health Commission and Her Honour Magistrate Sue Duncombe, Local Court of NSW, Bar Association, Sydney

27 September Twilight seminar, Coastal management in NSW, presented by Emeritus Professor Bruce Thom, an Australian scientist and educator, Judicial Commission of NSW, Sydney

2 November Twilight seminar, Sentencing in the Land and Environment Court 2000 – 2015, presented by Mr Hugh Donnelly, Director of Research and Sentencing, and Mr Michael Cain, Senior Research Officer, Judicial Commission of NSW, Sydney

11 November Sydney Peace Prize Lecture and Gala Dinner, presented by 2016 recipient Ms Naomi Klein, renowned Canadian journalist, activist and award-winning author, a collaboration between the City of Sydney and the Sydney Peace Foundation (a Foundation of the University of Sydney), Sydney Town Hall and Hilton Sydney

1-2 December Cross-jurisdictional judgment writing workshop, presented by Professor James Raymond, President of the International Institute for Legal Writing and Reasoning, Judicial Commission of NSW, Sydney

Speaking engagements

22 October *Recent Developments*, EPLA 2016 Conference, Hydro Majestic, Medlow Bath NSW

Ms Rosemary Martin, Senior Commissioner

Conferences and seminars

20 - 22 October Environmental and Planning Law Association 2016 Conference, Hydro Majestic, Medlow Bath

2 November Twilight seminar, Sentencing in the Land and Environment Court 2000 – 2015, presented by Mr Hugh Donnelly, Director of Research and Sentencing, and Mr Michael Cain, Senior Research Officer, Judicial Commission of NSW, Sydney

1 - 2 December Cross-Jurisdictional Judgment Writing Workshop, presented by Professor James Raymond, Judicial Commission of NSW, Sydney

Membership of legal, cultural or benevolent organisations

Member, Australian Institute of Company Directors

Member, Land and Environment Court of NSW Education Committee

Member, Land and Environment Court of NSW Library Committee

Member, Land and Environment Court of NSW Court Users Group

Mr Graham Brown, Commissioner

Conferences and seminars

10 February Judicial Commission of NSW field trip to Barangaroo Reserve, presented by Ms Sonya Errington, Director, Governance, Mr Joe Clayton, Community Manager and Mr Clarence Slokee, Team Leader, Visitor Services, Barangaroo Development Authority, Sydney

13 April Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney

19-20 May Land and Environment Court of NSW Annual Conference 2016, Peppers Craigieburn, Bowral

3 August Twilight seminar, Appeals from the Land and Environment Court, presented by the Honourable Justice Mark Leeming, Court of Appeal, Judicial Commission of NSW, Sydney

27 September Twilight seminar, Coastal Management in NSW, presented by Emeritus Professor Bruce Thom, Faculty of Science, University of Sydney, Judicial Commission of NSW, Sydney

Speaking engagements

14 October *Joint conferencing/joint reports/concurrent evidence – Experiences of the Land and Environment Court*, Australasian Conference of Planning and Environment Courts, Adelaide

Membership of legal, cultural or benevolent organisations

Planning Institute of Australia

Ms Annelise Tuor, Commissioner

Conferences and seminars

- 10 February Judicial Commission field trip to Barangaroo Reserve, presented by Ms Sonya Errington, Director, Governance, Mr Joe Clayton, Community Manager and Mr Clarence Slockee, Team Leader, Visitor Services, Barangaroo Development Authority
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- 9 March Twilight seminar, Resolution Processes in NCAT, presented by Her Honour Magistrate Nancy Hennessy, Deputy President and Division Head, Administrative and Equal Opportunity Division, NCAT, Judicial Commission of NSW, Sydney
-
- 10 March Mahla Pearlman Oration 2016, Addressing Climate Injustice: Human Rights and Climate Change in the Courts, presented by Professor Jacqueline Peel, University of Melbourne, Federal Court, Sydney
-
- 13 April Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of NSW, Judicial Commission of NSW, Sydney
-
- 19-20 May Land and Environment Court of NSW Annual Conference 2016, Peppers Craigieburn, Bowral
-
- 4 August Ngara Yura Program twilight seminar, Understanding Intergenerational Trauma, presented by Mr Brian Dowd, Trauma Therapist, The People Mechanic, Dr Robyn Shields AM, Deputy Commissioner, NSW Mental Health Commission and Her Honour Magistrate Duncombe, Local Court of NSW, Bar Association, Sydney
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- 27 September Twilight seminar, Coastal Management in NSW, presented by Emeritus Professor Bruce Thom, Faculty of Science, University of Sydney, Judicial Commission of NSW, Sydney
-
- 21 October EPLA 2016 Conference, Hydro Majestic, Medlow Bath
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Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Ms Susan Dixon, Commissioner

Conferences and seminars

21 January	The Psychology of Conflict, presented by Paul Randolph, Resolution Institute, Sydney
2 February	Law of Evidence, UNSW Seminar, presented by the Hon. Chief Justice T F Bathurst AC, Sydney
10 February	Judicial Commission of NSW field trip to Barangaroo Reserve, led by Ms Sonya Errington, Director, Governance, Mr Joe Clayton, Community Manager and Mr Clarence Slockee, Team Leader, Visitor Services, Barangaroo Development Authority, Sydney
9 March	Twilight seminar, Resolution Processes in NCAT, presented by Her Honour Magistrate Nancy Hennessy, NCAT, Judicial Commission of NSW, Sydney
23 March	Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney
13 April	Twilight seminar, Administrative Law, Dr Greg Weeks, Judicial Commission of New South Wales, Sydney
19-20 May	Land and Environment Court of NSW Annual Conference 2016, Peppers Craigieburn, Bowral
3 August	Twilight seminar, Appeals from the LEC, presented by the Hon. Justice Mark Lemming, NSW Court of Appeal, Judicial Commission of NSW, Sydney
27 September	Twilight seminar, Coastal Management in NSW, presented by Emeritus Professor Bruce Thom, Judicial Commission of NSW, Sydney
11 October	Judicial Commission of New South Wales field trip to the Old Clare Hotel, Heritage NSW Architecture Awards, led by Tim Greer, Tonkin Zulaikha Greer, Sydney
17 - 21 October	Harvard Negotiation Institute, Program on Negotiation at Harvard Law School, presented by Samuel Williston Professor of Law and Chair Robert Mnookin, Gary Friedman and Dana Curtis
29 November	Sydney's Strategic Planning Transformation, presented by the Greater Sydney Planning Commission, Planning Institute Australia, Sydney

Speaking engagements

August	<i>Operation of the Land and Environment Court</i> , Land and Environment Court Clinic Macquarie University Internship students, Land and Environment Court, Sydney
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Membership of legal, cultural or benevolent organisations

Member, Council of Australasian Tribunals

Member, Institute of Arbitrators and Mediators Australia

Member, Australian Disputes Resolution Association

Ms Linda Pearson, Commissioner

Conferences and seminars

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| 9 March | Twilight seminar, Resolution Processes in NCAT, presented by Her Honour Magistrate Nancy Hennessy, Deputy President and Division Head, Administrative and Equal Opportunity Division, NCAT, Judicial Commission of NSW, Sydney |
| 10 March | Mahla Pearlman Oration 2016, Addressing Climate Injustice: Human Rights and Climate Change in the Courts, presented by Professor Jacqueline Peel, University of Melbourne, Federal Court, Sydney |
| 15 March | The Art of Persuasion: Advocacy at Mediation, Mr Robert Angyal SC and Ms Julie Soars, NSW Bar Association, Sydney |
| 13 April | Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney |
| 4 May | Reasonable Apprehension of Bias, The Hon. Justice Debra Mortimer, Australian Institute of Administrative Law, Sydney |
| 14 May | Ngara Yura Program site visit to Kamay Botany Bay National Park, Kurnell |
| 19-20 May | Land and Environment Court of NSW Annual Conference 2016, Peppers Craigieburn, Bowral |
| 9-10 June | Between CATs and Courts, COAT National Conference, Hobart |
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Speaking engagements

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| 23 March | Chair, <i>Planning and Environmental Law</i> , Continuing Legal Education, Faculty of Law, University of New South Wales |
| 28 May | <i>Environmental Expert Evidence: The Good, the Bad and the Ugly</i> , EIANZ, Sydney |
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Publications

R Lyster, Z Lipman, N Franklin, L Pearson & G Wiffen, *Environmental and Planning Law in New South Wales* (4th ed, 2016)

Membership of legal, cultural or benevolent organisations

Member, Environmental Law Commission, International Union for Conservation of Nature (IUCN)

Chair, Land and Environment Court of NSW Judicial Newsletter Committee

Member, Land and Environment Court of NSW Education Committee

Ms Judy Fakes, Commissioner

Conferences and seminars

10 February	Judicial Commission of NSW field trip to Barangaroo Reserve, led by Ms Sonya Errington, Director, Governance, Mr Joe Clayton, Community Manager and Mr Clarence Slockee, Team Leader, Visitor Services, Barangaroo Development Authority, Sydney
9 March	Twilight seminar, Resolution processes in NCAT, Her Honour Magistrate Nancy Hennessy, Deputy President NCAT, Judicial Commission of NSW, Sydney
17 May	City Talks, Greening Global Cities, Mitchell J Silver, New York City Parks Commissioner; and panel of experts, City of Sydney
19-20 May	Land and Environment Court 2016 Annual Conference, Peppers Craigburn, Bowral
3 August	Twilight Seminar, Appeals from the Land and Environment Court, Hon. Justice Mark Leeming, Judicial Commission of NSW, Sydney
21-22 October	Environmental Planning Law Association Annual Conference, Hydro Majestic, Medlow Bath
8 November	City Talks, Is Sydney Ready – working together for a resilient city, Michael Berkowitz, President, 100 Resilient Cities, plus panel of experts, City of Sydney Council

Speaking engagements

16 March	Lecture, <i>Land and Environment Court – Jurisdiction and Practice and The duties of an expert witness</i> , Diploma in Arboriculture, Ryde College of TAFE
23 March	Lecture, <i>The Trees (Disputes Between Neighbours) Act 2006</i> , Diploma in Arboriculture, Ryde College of TAFE
8 August	Lecture, <i>Trees and Neighbours – What’s the problem?</i> , Australian Garden History Society Victorian Branch, Annual General Meeting, Melbourne
2 September	Paper, <i>Trees and Neighbours – Managing Expectations</i> , TREENET Symposium, Adelaide

6 September	Tutorial, <i>The Trees (Disputes Between Neighbours) Act 2006</i> , Land and Environment Court Clinic, Law students, Macquarie University
21 October	Presentation, <i>Landscaping in Bushfire-prone Areas</i> , EPLA Annual Conference, Hydro Majestic, Medlow Bath

Membership of legal, cultural or benevolent organisations

Member, International Society of Arboriculture

Member, TREENET Management Committee

Ms Susan Morris, Commissioner

Conferences and seminars

21 January	The Psychology of Conflict, Paul Randolph, Resolution Institute, Sydney
10 February	Judicial Commission of NSW field trip to Barangaroo Reserve, led by Ms Sonya Errington, Director, Governance, Mr Joe Clayton, Community Manager and Mr Clarence Slockee, Team Leader, Visitor Services, Barangaroo Development Authority, Sydney
9 March	Twilight seminar, Resolution Processes in NCAT, presented by Her Honour Magistrate Nancy Hennessy, NCAT, Judicial Commission of NSW, Sydney
23 March	Twilight seminar, Contaminated Lands, David Gregory, Environment and Planning Law Association, Sydney
13 April	Twilight seminar, Administrative Law, Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney
19-20 May	Land and Environment Court of NSW Annual Conference 2016, Peppers Craigieburn, Bowral
3 August	Twilight seminar, Appeals from the LEC, presented by the Hon. Justice Mark Lemming, NSW Court of Appeal, Judicial Commission of NSW, Sydney
27 September	Twilight seminar, Coastal Management in NSW, presented by Emeritus Professor Bruce Thom, Judicial Commission of NSW, Sydney
11 October	Judicial Commission of New South Wales field trip to The Old Clare Hotel, Heritage Award winner NSW Architecture Awards, Tim Greer, Tonkin Zulaikha Greer, Sydney
20-22 October	Environment and Planning Law Association Annual Conference 2016, Hydro Majestic, Medlow Bath
29 November	Sydney's Strategic Planning Transformation, presented by Greater Sydney Planning Commission, Planning Institute Australia, Sydney

Speaking engagements

21 October *Conditions of Consent*, presentation to the Environment and Planning Law Association Annual Conference 2016, Hydro Majestic, Medlow Bath

Membership of legal, cultural or benevolent organisations

Registered Planner, Planning Institute of Australia (CPP)

Ms Susan O'Neill, Commissioner

Conferences and seminars

March-
November Juris Doctor (part-time), University of Sydney
Subjects completed: *Evidence, Federal Constitutional Law, Administrative Law, Corporations Law, Philosophy of Law*

10 February Judicial Commission of NSW field trip to Barangaroo Reserve, presented by Ms Sonya Errington, Director, Governance, Mr Joe Clayton, Community Manager and Mr Clarence Slokee, Team Leader, Visitor Services, Barangaroo Development Authority, Sydney

9 March Twilight seminar, Resolution Processes in NCAT, presented by Her Honour Magistrate Nancy Hennessy, Deputy President and Division Head, Administrative and Equal Opportunity Commission, NCAT, Judicial Commission of NSW, Sydney

24 March NSW Architecture Awards, Entrant Presentations, Sydney

12-14 April NSW Architecture Awards, Project Tours

13 April Twilight seminar, Administrative Law, presented by Dr Greg Weeks, Senior Lecturer, Faculty of Law, University of New South Wales, Judicial Commission of NSW, Sydney

19-20 May Land and Environment Court of NSW Annual Conference 2016, Peppers Craigieburn, Bowral

30 June NSW Architecture Awards, Presentation Dinner, Australian Technology Park, Sydney

11 October Judicial Commission of NSW field trip to the Old Clare Hotel, presented by Mr Tim Greer, Director, Tonkin Zulaikha Greer Architects, Chippendale

Speaking engagements

19 February Keynote speech, International Council on Monuments and Sites Symposium, Sydney

12 April *Section 34 Conferences*, speech delivered at PIA Bartier Perry Breakfast Series, Sydney

24 April *Heritage Law*, Guest Lecturer at Macquarie University, Sydney

Membership of legal, cultural or benevolent organisations

Member, Australian Institute of Architects

Registered Architect, NSW Architects Registration Board

Member, Jury Panel for 2016 NSW Architecture Awards Heritage and Small Project Architecture categories

Ms Danielle Dickson, Commissioner

Conferences and seminars

3 August Twilight seminar, Appeals from the Land and Environment Court, presented by the Hon. Justice Mark Lemming, NSW Court of Appeal, Judicial Commission of New South Wales, Sydney

27 September Twilight seminar, Coastal Management in NSW, presented by Emeritus Professor Bruce Thom, University of Sydney, Judicial Commission of New South Wales, Sydney

11 - 14 October Australasian Conference of Planning and Environment Courts and Tribunals 2016, Adelaide Convention Centre, Adelaide

8 November Tony Blackshield Lecture hosted by Macquarie University, Law Reform in the 21st Century, presented by Mr Alan Cameron AO, Chairperson, NSW Law Reform Commission, Federal Court of Australia, Sydney

Membership of legal, cultural or benevolent organisations

Member, Planning Institute of Australia

Member, Resolution Institute

Mr Michael Chilcott, Commissioner

Conferences and seminars

2 August Twilight Seminar, Appeals from the Land and Environment Court, Justice Mark Leeming, NSW Court of Appeal, Judicial Commission of NSW, Sydney

9 August Seminar, Land and Environment Court of NSW Clinic, Judith Preston, Macquarie University, Land and Environment Court of NSW, Sydney

23 August Seminar, Land and Environment Court of NSW Clinic, Judith Preston, Macquarie University, Land and Environment Court of NSW, Sydney

30 August Seminar, Land and Environment Court of NSW Clinic, Judith Preston, Macquarie University, Land and Environment Court of NSW, Sydney

6 September Seminar, Land and Environment Court of NSW Clinic, Judith Preston, Macquarie University, Land and Environment Court of NSW, Sydney

11 October	Judicial Commission of NSW field trip to The Old Clare Hotel, Tim Greer, Director, Tonkin Zulaikha Greer Architects, Sydney
3-4 November	EIANZ 2016 Annual Conference, Sofitel, Brisbane
1-2 December	Cross-jurisdictional judgment writing workshop, presented by Professor James Raymond, President of the International Institute for Legal Writing and Reasoning, Judicial Commission of NSW

Speaking engagements

3 November	<i>Opening conference address</i> , EIANZ 2016 Annual Conference, Sofitel, Brisbane
4 November	<i>Closing conference address</i> , EIANZ 2016 Annual Conference, Sofitel, Brisbane

Membership of legal, cultural or benevolent organisations

Member, Environment Institute of Australia and New Zealand (EIANZ)

Member, Rotary Club of Sydney

Ms Jennifer Smithson, Commissioner

Conferences and seminars

27 September	Twilight seminar, Coastal Management in NSW, presented by Emeritus Professor Bruce Thom, University of Sydney, President, Australian Coastal Society, Judicial Commission of NSW, Sydney
6 October	NSW Judicial Commission Ngara Yura Committee, the NSW Bar Association Indigenous Barristers' Strategy Working Party and the Law Society of NSW Indigenous Issues Committee Joint Seminar series, 'Aboriginal trauma, Foetal Alcohol Spectrum Disorder and the juvenile justice system', presented by June Oscar AO 2016 Desmond Tutu Fellow and the Hon. Judge Dina Yehia SC, District Court of NSW, NSW Bar Association, Sydney
11 October	Judicial Commission of NSW field trip to the Old Clare Hotel, presented by Mr Tim Greer, Director, Tonkin Zulaikha Greer Architects, Chippendale
19 October	Ngara Yura Program seminar, Clean Slate without Prejudice, presented by Superintendent Luke Freudenstein, Commander, Redfern Local Area Command and Mr Shane Phillips, CEO, Tribal Warrior Association Mentoring Program, Judicial Commission of NSW, Sydney
8 November	Heritage Seminar: A conversation with Stephen Davies (Heritage Council chair), Bartier Perrier, Sydney

Membership of legal, cultural or benevolent organisations

Life Fellow, Planning Institute of Australia

Nationally Accredited Mediator

Appendices

- Appendix 1 – Court Users Groups
- Appendix 2 – Court Committees

Appendix 1 – Court Users Groups

Court Users Group

A Court Users Group was established in 1996 as a consultative committee comprising of representatives from interested organisations. The Group meets 4 times a year and assists with improving Court services by making recommendations to the Chief Judge about:

- improving the functions and services provided by the Court; and
- ensuring services and facilities of the Court are adapted to the needs of litigants and their representatives.

The Group has an advisory role and has no authority to require any action or change. However its deliberations have been a catalyst for a number of initiatives, such as the 1999 Pre-Hearing Practice Direction and a survey of electronic callover users resulting in significant improvements to callover procedures.

Members during 2016

The Hon. Justice Brian J Preston SC, Chief Judge (Chair)	Land and Environment Court
Senior Commissioner Rosemary Martin	Land and Environment Court
Registrar Joanne Gray	Land and Environment Court
Mr Peter Castor	Institute of Australian Consulting Aboriculturists
Mr Stephen Child	Australian Property Institute
Ms Lesley Finn	Law Society Development and Planning Committee, Law Society of New South Wales
Mr Aaron Gadiel	NSW Urban Taskforce
Mr Sam Haddad	Engineers Australia
Ms Sue Higginson	EDO NSW
Mr Tom Howard SC/Mr Clifford Ireland	New South Wales Bar Association
Mr James Johnson	Nature Conservation Council of New South Wales
Ms Patricia Lenehan/Sarah Anderson/Ms Erin Gavin	Office of Environment and Heritage
Ms Felicity Douglas	Local Government NSW

Ms Helen Macfarlane/ Ms Penny Murray/Ms Evelene Denning-Franklin	Urban Development Institute of Australia
Ms Roslyn McCulloch/Dr James Smith	Environment and Planning Law Association NSW
Mr Michael Neustein	Royal Australian Institute of Architects (NSW Chapter)
Mr Eugene Sarich	Australian Institute of Building Surveyors and Australian Institute of Environmental Health
Mr Chris Shaw	Property Council of Australia
Mr Gary Shiels	Planning Institute of Australia (NSW Division)
Mr Stuart Simington	Housing Industry Association
Ms Jennifer Smith/Ms Donette Holm	Department of Planning & Environment
Mr Ian Woodward	Local Government Lawyers Group
Ms Carly Wood	Australian Institute of Landscape Architects
Mr Michael Dalla-Pozza	NSW Trade & Investment
Councillor Michel Reymond	Local Government Representative

Mining Court Users Group

A Mining Court Users Group was established in 2010 as a consultative committee comprising of representatives of the Court and representatives of mining related organisations and mining lawyers. The Group meets as needed to enable two-way communication in relation to the Court's functions in hearing and disposing of proceedings in the Court's mining jurisdiction. The Group has an advisory role and has no authority to require any action or change.

Appendix 2 – Court Committees

Court Committees

The Court has a number of internal committees to assist in the discharge of the Court's functions.

Rules Committee

The Rules Committee meets throughout the year to consider proposed changes to the Rules applicable to the Court with a view to increasing the efficiency of the Court's operations, and reducing cost and delay in accordance with the requirements of access to justice.

Members

The Hon. Justice Brian Preston SC, Chief Judge

The Hon. Justice Terry Sheahan AO

The Hon. Justice Malcolm Craig

Education Committee

The Education Committee organises the Annual Conference and twilight seminars for the Judges and Commissioners of the Court.

Members

The Hon. Justice Nicola Pain (Chair)

The Hon. Justice Tim Moore

Senior Commissioner Rosemary Martin

Commissioner Susan O'Neill

Ms Joanne Gray, Registrar

Ms Una Doyle, Education Director, Judicial Commission of NSW

Library Committee

The Library Committee provides advice on the management of the Judges' Chambers Collections and other Court Collections.

Members

The Hon. Justice Rachel Pepper (Chair)

The Hon. Justice Tim Moore

Senior Commissioner Rosemary Martin

Commissioner Susan O'Neill

Registrar Joanne Gray

Mr Holger Aman

Ms Vanessa Blackmore

Ms Susan Ramsay

Court Newsletter Committee

The Court Newsletter Committee reviews and summarises recent legislation and judicial decisions for publication in the Judicial Newsletter. The Judicial Newsletter is published each quarter.

Members

The Hon. Justice Tim Moore (Chair)

Ms Vicki Ferguson, Information & Research Officer

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• Statutes and Regulations

Planning:

The *Greater Sydney Commission Act 2015* commenced 27 January 2016.

Standard Instrument (Local Environmental Plans) Amendment (Maps) Order 2016, published 27 January 2016, amended the Standard Instrument so that a reference to the Minister is taken to be a reference to the Greater Sydney Commission in the case of any map that applies to a local government area in the Greater Sydney Region (within the meaning of the *Greater Sydney Commission Act 2015*) and that is adopted by a local environmental plan on or after 27 January 2016.

Environmental Planning and Assessment Amendment (Savings and Transitional) Regulation 2015, published 8 January 2016, made provisions of a savings and transitional nature consequent on the amendments made by the *Greater Sydney Commission Act 2015* to the *Environmental Planning and Assessment Act 1979*. Those amendments include providing for local environmental plans applying in the Greater Sydney Region to be made by the Greater Sydney Commission instead of the Minister for Planning.

Environmental Planning and Assessment Regulation 2016, published 26 February 2016, published a new planning database from a requirement to other material published on the NSW pl

Environmental Planning and Assessment (Southwest Project) Order 2015, published 25 November 2015, publishes the purposes of Sydney Metro City and approximately 30km from Chatswood to significant infrastructure and critical Sta

Environmental Planning and Assessment published 25 November 2015, declares project, being a new multi-lane road link Georges Road) and St Peters, the wide Georges Road and proposed tunnels an associated works to upgrade local road State significant infrastructure.

Local Government:

Local Government Amendment (Councils) Act 2015, commenced 13 November 2015, modify the legislative scheme for dealing performance and council maladministration. *Local Government Amendment (Miscellaneous Provisions) Act 2015*, published 13 November 2015, prescribe to councillors, members of staff of coun

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• Local Government:

As of 23 September, the *Local Government Amendment (Governance and Planning) Act 2016 No 38* (Proclamation) commenced some changes to the *Local Government Act 1993* in respect of:

- (a) the purpose of the Act and principles for local government;
- (b) the roles of governing bodies of councils, mayors and councillors;
- (c) the appointment of administrators, financial controllers and temporary advisers;
- (d) the functions of general managers;
- (e) delegations by councils; and
- (f) the auditing of councils by the Auditor-General.

Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016 amended the *Land and Environment Court Act 1979* (s.13(4)) and the *Statutory and Other Offices Remuneration Act 1975* (Schedule 2) to bring the determination of remuneration of acting Commissioners of the Court within the scope of determinations by the Statutory and Other Offices Remuneration Tribunal. These amendments came into effect on 25 October 2016.

Statute Law (Miscellaneous Provisions) Act (No 2) 2016 relevantly contained provisions which made or will make minor changes to the Acts set out below. The Act was assented to on 25 October 2016.

(a) *Aboriginal Land Rights Act 1983* to provide that:

- a voting member of a Local Aboriginal Land Council (LALC) attend 2 meetings of the Council within a 12-month period before becoming entitled to vote in elections for Board members of the Council does not apply if an administrator has been appointed to perform all of the Council's functions at any time during that period;
- a person who is elected to fill a vacancy arising during the term of office of a Chairperson or Deputy Chairperson of the Board of a LALC holds office for the remainder of the term of the vacant office (rather than for a fixed period of 2 years, as is currently the case); and

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